

Department of Land and Natural Resources

Amendments to Chapters 13-230, 13-231, 13-232, 13-233,
13-234, 13-241, 13-242, 13-244, 13-250, 13-252, 13-253, 13-256
Hawaii Administrative Rules

1. Section 13-230-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-230-4 Penalties and prosecution. Any person who violates any of these rules or who violates any lawful command issued pursuant to these rules [by any small boat harbor master, harbor agent or any boating district manager, while in the discharge of that person's duty, shall be guilty of a misdemeanor. Recommended fines for each violation are as set forth in the bail schedule for boating, small boat harbors, ocean waters, navigable streams and beaches, provided that nothing in these rules shall prohibit a court from imposing the maximum fine of not more than \$10,000 for each violation as provided in section 200-14, Hawaii Revised Statutes. In addition to or as a condition to the suspension of any fines, the offender may be deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than two years] shall be subject to fines as [prescribed] provided in [section] sections 200-14, 200-14.5, and 200-25, [Hawaii Revised Statutes] HRS. Prosecution of offenders shall be as provided by law." [Eff 2/24/94 am] (Auth: §§200-2, 200-3, 200-4, 200-14, 200-14.5, 200-25) (Imp: 200-2, 200-3, 200-4, 200-14, 200-14.5, 200-25)

2. Section 13-230-6, Hawaii Administrative Rules, is amended to read as follows:

"§13-230-6 Notice. Where notice to a permittee, co-owner, lien holder, owner or any other party is required by this chapter, the department shall [effect service] provide notice by one of the following methods:

- (1) Posting the notice in a conspicuous place aboard the permittee's vessel or at the assigned berth;
- (2) Mailing the notice to the person by certified mail, return receipt requested, at the person's last [known] address on record, provided that service by mail is deemed received and completed five working days after the date of mailing; or
- (3) Personal service;

provided that in an emergency, where life or property is endangered or if a vessel may interfere with other vessels, construction or maintenance of berthing facilities, or with the free and proper navigation of a waterway unless immediate action is taken, remedial action may be taken by the department without prior notice." [Eff 2/24/94

am] (Auth: HRS §§200-4, 200-9, 200-10, 200-22, 200-24)

(Imp: HRS §§200-4, 200-9, 200-10, 200-22, 200-24)

3. Section 13-230-8, Hawaii Administrative Rules, is amended by deleting one definition and adding new definitions to read as follows:

“13-230-8 Definitions. ***

"Boatowner" means the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered[.], provided that in cases where the owner of the corporation or other business entity leasing or chartering a commercial vessel and the lessor or charterer of the commercial vessel is the same person, the physical operation of the vessel by the lessor or charterer shall not compromise the exclusive right of possession of the vessel by the corporation or other business entity. The documentation of ownership must meet the requirements of section 13-241-5(c) or proof of ownership for vessels described in section 13-241-2.

"Beaches of the State," means all of the shoreline from the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation growth or by the upper limit of debris left by the wash of the waves to the base line of the territorial seas, or where a survey has been performed to determine the boundaries of the beaches of the State under the jurisdiction of the division of boating and ocean recreation."

"Commercial activities" means any activity conducted by a person, including any not-for-profit organization, engaged in any trade or business involving services rendered to individuals in conjunction with a use or activity at a State boating facility, or on beaches of the State. Any person receiving compensation in conjunction with a use or activity at a State boating facility, or on beaches of the State, who seeks to qualify as not-for-profit organization shall have the burden of establishing to the satisfaction of the department through written agreement that any fee or charge is strictly a sharing of the actual expenses of the use or activity. A not-for-profit organization that charges only a nominal fee to cover administrative costs and conducts activities at a State boating facility, or on beaches of the State at a frequency or magnitude that does not significantly utilize, burden, or compromise the resources at a State boating facility, or on beaches of the State may be exempted by the department on a case-by-case basis from paying a user fee for a commercial activity permit."

"Commercial vessel" means a vessel used for conducting commercial activities on the waters of the State that is owned or leased by a person, corporation or any legal entity where proof of ownership meets the requirements of section 13-241-5(c), unless the vessel is documented with the United States Coast Guard."

"Manually-propelled vessel" means a manually-propelled vessel primarily moved only by hands, feet, oars, poles or paddles. Surfboards shall not be considered a vessel and shall be

excluded from this definition.

“State boating facility,” means a State small boat harbor, boat ramp, off-shore mooring, pier, wharf, State property, or landing under the jurisdiction of the department.”

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

4. Section 13-230-25, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

“§13-230-25 Particular categories. ***

[(b) Minors.

- (1) Unemancipated minor. The residence of an unemancipated minor is the residence of the minor's father, if living, or the residence of the minor's mother, if the father is deceased.
- (2) Divorced parents. If the parents of an unemancipated minor are divorced, the minor's residence is that of the person to whom the minor's custody has been awarded by the court. If no award of custody has been made, the minor's residence is that of the father. However, if the minor maintains the minor's primary abode with the parent not having legal custody, residence of the minor is determined by that parent with whom the minor's primary abode is maintained.
- (3) Separated parents. If the parents of an unemancipated minor are separated, without a divorce having been granted or custody award having been made, the minor's residence is that of the father if the minor is not living with either parent. If the minor maintains primary abode with a parent, the minor's residence is the residence of that parent.
- (4) Death of a parent who had custody. The residence of an unemancipated minor becomes that of the surviving parent upon the death of the parent who had the minor's custody.
- (5) Both parents deceased. If both parents are deceased, the residence of the unemancipated minor remains that of the last parent to die until changed by court order. Upon court appointment of a guardian for the minor, the residence of the minor becomes that of the guardian.
- (6) A nonresident unemancipated minor attending an institution of higher learning outside of Hawaii or on active duty with the United States Armed Forces, whose parents become residents of Hawaii, and who would reach majority before deriving Hawaiian residence from the minor's parents' new status, may be classified as a resident for fee purposes when the minor's parents have

completed twelve consecutive months of residence; provided that such classification will be lost if actions inconsistent with resident status are taken after leaving such institution or discharge from the military (e.g., failure to promptly make a home in Hawaii).

- (7) If an unemancipated minor's parents lose their Hawaii residence, the minor will be classified as a nonresident at the next residence determination date. However, if the parents' change of residence is due to obedience to active-duty military orders, the minor shall continue to pay only resident fees and charges as long as one of the minor's parents remain on active duty and in a Hawaii resident status.

- (8) (b) Emancipated minors. An emancipated minor shall be considered an adult for purposes of [residence hereunder] determining residency status. The following shall constitute indications of emancipation, no one of which is controlling:

[(A)] (1) Financially independent or self-supporting.

[(B)] (2) Subsistence not provided by parent or legal guardian.

[(C)] (3) Prior military service.

[(D)] (4) Other primary and secondary indications of residence [enumerated] as provided under section [13-230-24] 13-230-23.

[(E)] (5) Any other conduct inconsistent with parental control and custody.

- [(9) Hanai. A person may base the person's residency on that of other than the parent or legal guardian, provided that the relationship between the person and the person or persons other than the parent or legal guardian is that of "hanai".]

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

5. Section 13-231-3, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-3 Use permits; issuance. (a) "Use permit" as used in these rules means the authorization by the department to utilize state boating facilities[, offshore mooring areas, offshore mooring] and waters of the state [ocean waters], as evidenced by the fully executed "agreement" described in section 13-231-2. The department may issue the following types of use permits:

- (1) Mooring permit. A use permit which authorizes the docking, mooring, or anchoring of a vessel at a [small boat harbor or offshore mooring area] state boating facility.

(A) Regular mooring permit. A use permit which authorizes the permittee to moor a vessel in a state [small boat harbor or at an offshore mooring area] boating facility for a period not to exceed one year from the date

of issuance.

- (B) Temporary mooring permit. A [non-renewable] use permit which authorizes the permittee to moor a vessel in a state [small boat harbor or at an offshore mooring area] boating facility for a period of thirty days or less from the date of issuance.
- (2) Harbor resident permit. A use permit which authorizes use of a state [small boat harbor] boating facility by the permittee for the purpose of residing on board a vessel authorized by the department to be used as a principal place of habitation while moored in Ala Wai or Ke'ehi [boat harbor or in Ke'ehi Lagoon] state boating facilities.
- (3) Stay aboard permit. A use permit which authorizes use of a state [small boat harbor or offshore mooring] boating facility by the permittee for the purpose of staying aboard a vessel while moored in a state [small boat harbor or at an offshore mooring] boating facility or at anchor.
- (4) Vacation permit. A use permit which authorizes use of the [small boat harbor or an offshore mooring area] state boating facility by the permittee for the purpose of using a vessel as a vacation site while moored in a state [small boat harbor or at an offshore mooring] boating facility or at anchor.
- (5) Principal habitation permit. A use permit which authorizes use of the [small boat harbor] state boating facility by the permittee for the purpose of using the vessel as a principal place of habitation while moored in Ala Wai or Ke'ehi [boat harbor or in the Ke'ehi Lagoon mooring area] state boat facilities.
- (6) Living aboard permit. A use permit which authorizes use of a [small boat harbor] state boating facility by living aboard a vessel at a [small boat harbor] state boating facility other than Ala Wai or Ke'ehi [boat harbor] state boating facilities.
- (7) Commercial activity permit. A use permit which authorizes the owner of a commercial vessel to use a [small boat harbor and its facilities or an offshore mooring] state boating facility or beaches of the State for commercial activities as specified in the commercial activity permit.
- (8) Storage permit. A use permit which authorizes use of a [small boat harbor] state boating facility storage area for vessels or other items on land at a [small boat harbor] state boating facility.
- (9) Miscellaneous permit. A use permit which authorizes use of a [small boat harbor or an offshore mooring area] state boating facility for other purposes as may be authorized by the department in its use permit and is consistent with these rules and applicable laws.
- (b) Use permits shall be issued only after the department has determined that the applicant has complied with all applicable laws [have been complied with] and that all fees and charges have been paid.
- (c) The issuance of any use permit by the department shall not create a property

interest in favor of the permittee to an unrestricted use of [state small boat harbors, facilities] a state boating facility or the waters of the state [ocean waters].”

[Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-10, 200-22, 200-24)

6. Section 13-231-6, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-6 Revocation of use [permit] permits. (a) Unless otherwise provided by law or rule, [If] if after giving thirty calendar days notice [and lapse of a reasonable period of time] as provided in section 13-230-6, the permittee fails to initiate remedy of any breach of the duties, covenants or conditions of the permit or to desist from violating [or permitting violation of] these rules or conditions of the permit, the department may revoke the permittee's use permit. Revocation of the use permit shall not preclude the State from pursuing any appropriate criminal action or administrative penalty against the permittee.

(b) In addition to subsection (a), the department may revoke a use permit for a deliberate misstatement or wilful failure to disclose any material fact in an application for a vessel number, documentation, registration of a vessel, or any of the use permits specified in section 13-231-3.

(c) Notwithstanding subsections (a) and (b), any commercial activity, living aboard or mooring permittee whose permit is under review for conditions and deficiencies that may lead to the revocation or denial of a renewal of the permit, shall be allowed an informal review procedure, as described in section 13-231-33.

(d) Notwithstanding section 13-231-33(g), the department may immediately revoke a commercial activity permit for any activity that endangers the health or safety of passengers or the public, or for submitting fraudulent information on a permit application and the permittee shall have no right to retain the commercial activity permit.

(e) Notwithstanding section 13-231-33(g), the department may immediately revoke a commercial activity permit for the delinquency in payment of any fees owed to the department in excess of sixty days after the fees become delinquent and the permittee shall have no right to retain the commercial activity permit unless the deficiency is corrected within thirty days from the date of revocation." [Eff 2/24/94

am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22) (Imp: HRS §§200-2, 200-4, 200-10, 200-22)

7. Section 13-231-13, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-13 Joint and several liability; non-transferability of use [permit] permits. (a)

All persons whose signatures have been affixed to any agreement with respect to a vessel shall be jointly and severally liable for [the full performance of such agreement] abiding by the all conditions of a permit. [No use permit shall be transferable, so that whenever] Whenever a permittee parts with possession or transfers the [title to] ownership of the vessel or any interest in the vessel identified in the permit to another person by any arrangement, the use permit shall not be transferrable and the permit shall automatically expire except as provided [herein] in this section [with respect to the original permittee]. The new [possessor, transferee, or] vessel owner shall have no right to [use the space covered by] the expired use permit or any of the conditions on the expired permit.

(b) Notwithstanding subsection (a), [Upon written] when an application has been submitted to the department and [approval] the application has been approved by the department:

- (1) The original permittee may retain the mooring space under the [permittee's] original permit; provided that the permittee moves another vessel into the space that conforms to the dimensions of the berth and that the permittee pays all applicable fees within thirty days [the permittee moves into the space another vessel owned by the permittee of appropriate characteristics for occupancy of the berth and pays the appropriate fees therefor];
- (2) The department may extend the deadline for a permittee to move another vessel into the space if conclusive evidence is presented by the permittee that shows that additional time is reasonable and essential to prevent undue hardship, provided that the extended deadline shall not exceed one year from the date of sale or transfer of the previously assigned vessel;
- [(2)] (3) A principal owner may retain a berth if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State;
- [(3)] (4) An owner may retain the berth if an interest in a vessel is transferred to the owner's spouse or other immediate family member; or
- [(4)] (5) The spouse of a permittee may retain all [small boat harbor use] state boating facility permits held by the permittee upon the permittee's death [of the permittee], provided that the permittee's will or a court decree states that the spouse shall be awarded ownership of the vessel identified in the mooring permit; or].
- [(5)] The department may extend the deadline for the permittee to place a new vessel in the assigned berth if conclusive evidence is presented to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time necessary to place a new vessel in the berth shall not exceed one hundred twenty days from the date of sale or transfer of the previously assigned vessel.]
- (c) Notwithstanding the requirements of subsection (a), the department may [permit] allow a one-time change in ownership of the permittee's vessel from personal ownership to corporate or other business ownership, provided that the permittee holds a valid

commercial activity permit or is engaged in commercial fishing as a primary means of livelihood and notifies the department in writing of an intended change in ownership. The transfer of all [small boat harbor] state boating facility use permits from the individual to the new corporation or other business entity shall be completed within one year of the date of receipt of the notification of intended change of ownership. The following requirements and conditions shall apply to the [foregoing] change in ownership:

- (1) The ownership of any corporation or other business entity formed under the provisions of this subsection shall be limited to the permittee, any co-owners of the vessel and the [members of the immediate families] spouse and children of the permittee and co-owners;
- (2) The permittee shall apply for the [reissuance] renewal of the commercial activity permit, mooring permit and any other [small boat harbor] state boating facility use permits in the name of the corporation or other business entity in accordance with the application procedures established by this chapter. Each application shall be accompanied by a copy of the charter of incorporation or other evidence acceptable to the department that the new corporation or other business entity is properly registered with the department of commerce and consumer affairs and is licensed to do business in the State; and
- (3) Each application for change of ownership shall be reviewed by the department in accordance with the provisions of section 13-231-82." [Eff 2/24/94 am]
(Auth: HRS §§200-2, 200-9,
200-10, 200-22, 200-24) (Imp: §§200-2, 200-9, 200-10, 200-22, 200-24)

8. Section 13-231-19, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-19 Salvage. (a) If a moored vessel is [moored so as to be] in danger of [wreckage] wrecking, or sinking, or damaging other property, or [sinking,] interfering with the free and proper navigation of a waterway, the department shall [upon] provide notice [and after reasonable time has elapsed, not to exceed ten days], as described in section 13-230-6, to [allow] the owner or the owner's [agent] designated representative to inform the owner or owner's designated representative to take appropriate action, not to exceed ten days from the date of notice, [take such action as the circumstances require to save or rescue the vessel, or prevent damage to other property or the obstruction of waterways;] provided that the department may take immediate remedial action, without prior notice in an emergency situation, where life or property is [endangered] in imminent danger or when the vessel [may interfere] is in danger of interfering with other vessels or with free and proper navigation of waterway unless immediate action is taken[, remedial action may be taken by the department without prior notice].

- (b) Appropriate fees and charges shall be assessed [against the owner for such

services] in accordance with section 13-234-20.” [Eff 2/24/94; am]
(Auth: HRS §§200-2, 200-10, 200-22, 200-24)(Imp: HRS §§200-2, 200-10, 200-22,
200-24)

9. Section 13-231-31, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-31 Administrative hearing. (a) The procedures under this section shall be used for any administrative hearing conducted by the division of boating and ocean recreation as required by law or rule.

(b) An administrative hearing officer shall be appointed by the chairperson. Unless otherwise provided by law, [Upon] upon setting the time for the hearing, the administrative hearing officer shall [make a reasonable effort to transmit a] provide notice as provided in section 13-230-6 to the owners or their attorneys, [if any, last known address, containing the] at least fifteen working days before the hearing and convey the following information:

- (1) The date, time, place and nature of hearing;
- (2) The legal authority under which the hearing is to be held; and
- (3) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an authorized officer or authorized employee of a corporation or trust or association may represent the corporation, trust or association.

(c) For an administrative hearing on the issue of revocation or denial of a commercial activity, living aboard or mooring permit, the chairperson, whenever possible, shall appoint a hearing officer from a list of neutral parties affiliated with an independent organization specializing in alternative dispute resolution.

[(c)] (d) All parties shall be afforded an opportunity to present evidence and [argument] arguments on all relevant issues involved.

[(d)] (e) Any procedure in the administrative hearing may be modified or waived by stipulation of the parties and informal disposition may be made of any administrative hearing by stipulation, agreed settlement, consent order, or default.

[(e)] (f) A tape recording may be made of the proceedings. No videotaping or other cameras shall be allowed during the hearing.

(g) The hearing officer shall submit the final findings and recommendations of the hearing to the chairperson within ten working days of the conclusion of the administrative hearing.

(h) The chairperson shall have thirty days from receipt of the findings and recommendations to review, accept, or modify the final recommendations made by the administrative hearing officer, and provide notice, as provided in section 13-230-6, to the permittee regarding the final recommendations.

[(f)] (h) Appeals from the decision may be made in accordance with chapter 91, Hawaii Revised Statutes.” [Eff 2/24/94 am] (Auth: HRS §§91-9, 91-9.5, 200-16) (Imp: HRS §§91-9, 91-9.5, 200-16)

10. Section 13-231-32, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-32 Rules of evidence; official notice. (a) The administrative hearing officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice.

(b) In administrative hearings:

(1) Any oral or documentary evidence may be received, but the department shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or [such] portions [thereof] of the record as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The department shall give effect to the rules of privilege recognized by law.

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original.

(3) Every party shall have the right to conduct cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence at the time of the hearing.

(4) The department may take notice of judicially recognizable facts. In addition, it may take notice of generally recognized technical or scientific facts within its specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and it shall be afforded an opportunity to contest the facts so noticed.

[(4)] (5) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree of quantum of proof shall be a preponderance of the evidence.

(6) Notwithstanding paragraph (5), when a commercial activity, living aboard or mooring permit, has been revoked or renewal of a commercial activity, living aboard or mooring permit, has been denied, the department shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree of quantum of proof shall be a preponderance of the evidence.” [Eff am]

(Auth: HRS §§91-9.5, 91-10, 200-16) (Imp: HRS §§91-9.5, 91-10, 200-16)

11. Section 13-231-33, Hawaii Administrative Rules, is adopted to read as follows:

“§13-231-33 Informal review procedures. (a) The procedures under this section shall be used by the division of boating and ocean recreation for the purpose of reviewing circumstances or deficiencies that may lead to the revocation of a commercial activity, living aboard or mooring permit pursuant to section 13-231-6, or denial of a commercial activity, living aboard or mooring permit renewal pursuant to section 13-231-61.

(b) Any information received by the department that may lead to the denial of a renewal of a commercial activity, living aboard or mooring permit or the revocation of a commercial activity, living aboard or mooring permit, shall be forwarded to the office administering the permit for review and verification. Upon determination that the information is substantive in nature, that office shall provide notice, as described in section 13-230-6 to the commercial activity, living aboard or mooring permittee within five working days and provide the following:

(1) A description of the alleged deficiency, violation, or activity that may place the commercial activity, living aboard or mooring permit at risk;

(2) Recommendations for corrective action; and

(3) A time period in which to complete the corrective action.

(c) An informal review of the issues by the administrator of the division of boating and ocean recreation may be requested by the permittee if the permittee believes the reported allegations are false, or if there are extenuating circumstances, or if the recommended correctives actions, or the time allowed for correction, are overly burdensome or unrealistic.

(d) Upon receipt of the request for an informal review of the issues, the division administrator shall convene an informal review panel composed of the senior managers of at least three boating districts, or their designated representatives, to hear arguments and review any evidence for statewide consistency and application.

(e) The meeting of the informal review panel, as described in subsection (d), shall be scheduled for a date that is mutually convenient for both the division of boating and ocean recreation and the permittee, but shall not be more than forty-five days from the date of receipt of the request for informal review.

(f) The division administrator shall notify the commercial activity permittee of the final recommendations of the informal review panel within ten working days after the meeting of the informal review panel. The permittee shall have thirty working days after receipt of the final recommendations of the informal review panel to accept, in writing, the recommendations, or request an administrative hearing if the recommendations include either revocation of the permit or denial of renewal of the permit. Failure to inform the department within thirty working days

of the permittee's decision shall cause the commercial activity, living aboard or mooring permit to automatically expire and the commercial activity, living aboard or mooring permit shall be offered to the next applicant.

(g) Unless otherwise provided by these rules, the commercial activity, living aboard or mooring permittee shall be allowed to continue operations or mooring of the vessel for the duration of the informal review procedure or any subsequent administrative hearing. If the period of review extends beyond the expiration date of the commercial activity, living aboard or mooring permit, a temporary permit shall be issued to the commercial activity, living aboard or mooring permittee to allow continued operations or mooring of the vessel until the review process is completed."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4)](Imp: HRS §§200-2, 200-3, 200-4)

12. Section 13-231-45, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-45 Vessel inspections. (a) "Approved marine surveyor" as used in this section means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a [small boat harbor] state boating facility in accordance with subsections (h) and (i). "Approved vessel inspector" as used in this section means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit.

(b) An inspection conducted by an approved vessel inspector or marine surveyor is deemed to meet the requirements of the marine inspection required by section 200-13, Hawaii Revised Statutes, and shall be valid for a period of [only one year] not more than two years.

[(b)] (c) Before a regular mooring permit [is] may be issued [or renewed], the vessel owner shall [complete a satisfactory vessel inspection conducted by an approved vessel inspector, or present a certificate not more than two years old to the department at the owner's own expense] be required to submit, along with the regular mooring permit application, a current vessel inspection certificate signed by an approved marine surveyor or approved vessel inspector who [certifying the surveyor has inspected] certifies that the vessel [and considers it to fulfill] fulfills the minimum requirements described in the exhibit at the end of this chapter [entitled] titled "vessel inspection report". The department reserves the right to inspect any vessel to ensure that any deficiencies or omissions noted on a marine survey have been corrected prior to issuing a permit.

[(c)] (d) Commercial vessels carrying more than six passengers for hire and vessels registered or documented as commercial fishing vessels are exempted from the provisions of subsection [(b)] (c) when evidence of a current Coast Guard certificate of inspection or commercial fishing vessel examination is presented.

[(d)] (e) Owners of vessels failing the vessel inspection shall have thirty days to correct

deficiencies and complete the inspection. The current vessel inspection certificate shall be submitted no earlier than one hundred and twenty calendar days and no later than ninety calendar days prior to the expiration of a regular mooring permit, to allow time for the correction of any deficiencies before the expiration of the regular mooring permit. Failure to do so [will] may preclude [re-issuance] the issuance of the [use] regular mooring permit or be cause for rejection of the application for mooring.

(e) The department may extend the deadline for correction of deficiencies prescribed in subsection (d) if the vessel owner presents conclusive evidence to the department that the granting of additional time is reasonable and essential due to the necessity of replacing essential parts and gear and that reasonable and diligent efforts by the owner to secure the items necessary to repair the vessel or replacement of parts is demonstrated, and further provided that any extension of time for compliance shall not exceed sixty days.]

(f) Owners of vessels that fail the vessel inspection may contest the decision at an arbitration board as established in section 200-13, Hawaii Revised Statutes, provided that the approved marine surveyor or approved vessel inspector who performed the original inspection shall not be a member of the arbitration board. The costs of the arbitration shall be borne by the vessel owner if it is determined that the vessel does not meet the minimum requirements to moor [in] at a [small boat harbor] state boating facility in accordance with these rules. If the arbitration board agrees with the department, [No] no additional time [allowance] shall be allowed for the correction of deficiencies [will be granted following arbitration] and the vessel shall be removed from the [small boat harbor] state boating facility. The costs of the arbitration shall be borne by the State if it is determined that the vessel does meet minimum requirements.

(g) The fee for a vessel inspection conducted by the department[, pursuant to this section] shall be as [prescribed] provided in section 13-234-29.

(h) A person who desires to become an approved marine surveyor shall apply to the department [upon] on a form furnished by the department and pay the application fee [prescribed] provided in section 13-234-30.

(i) An application to become an approved marine surveyor [shall not be accepted by the department unless] may be accepted if:

- (1) [the] The applicant [is] has been engaged for two of the last five years wholly or partly in the business of performing marine surveys for gain; [or compensation]
- (2) Compensation and the person's current surveys are acceptable to at least one insurance company or surety company authorized to do business in the State[.]; and
- (3) The applicant is engaged in any other capacity, e.g., marine repair work, marine or related brokerage or sales.

(j) [An] A permit issued to an approved marine surveyor [permit] shall be valid for a period of three years from date of issuance. The department [reserves the right to] may revoke any approved marine surveyor permit at any time [prior to the expiration of the permit].

(k) A satisfactory vessel inspection shall consist of the following:

- (1) Presentation of the vessel to be inspected at a place designated by the harbor

agent;

- (2) A demonstration that the vessel is capable of being regularly navigated beyond the confines of the [harbor or mooring area] state boating facility and maneuvering into and out of the assigned berth;
- (3) A finding that the vessel and all systems are in good material and operating condition;
- (4) A finding that the requirements described in the exhibit at the end of this chapter entitled "vessel inspection report" are met; and
- (5) Applicable standards published by the U.S. Coast Guard and the American Boat and Yacht Council, Inc. (ABYC) shall be used in conducting the vessel inspection, and are adopted and incorporated herein by reference.

(l) A marine survey shall be required for any vessel [which] that has undergone any substantial reconstruction, alteration or modification of the original vessel design, certifying that such reconstruction, alteration or modification does not materially [affect] reduce the vessel's stability or maneuverability, and the existing power plant is in good operating condition and meets the minimum power requirement necessary for safe navigation beyond the confines of the [small boat harbor or offshore mooring area] state boating facility in which it is moored. A certificate of protection and indemnity insurance for the vessel, in an amount of not less than \$100,000, naming the State as an additional insured, shall be required in addition to the marine survey.

(m) No modification or alteration to a houseboat moored in Ke'ehi Lagoon [which] that changes the length, beam or size of silhouette area from that which existed at the time of issuance of the initial mooring permit shall be allowed without prior approval of the department, provided that routine maintenance and repairs for safety, security and structural integrity shall be allowed." [Eff 2/24/94; am] (Auth: HRS §§200-1, 200-2, 200-4, 200-13, 200-22, 200-24) (Imp: HRS §§200-1, 200-2, 200-9, 200-13, 200-22, 200-24)

13. Section 13-231-51, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-51 [Business] Commercial activities. (a) No person shall engage in any [business or] commercial activity, including rental, guided tours, bare boat or demise charters, at any [small boat harbor or other small boat] state boating facility, or Waikiki or Kaanapali beaches without[:

- (1) Prior] prior written approval of the department[:] or an applicable permit issued by the department.

[(2) The proper execution of an agreement with the department.]

(b) Vessels owned by the United States are exempted from subsection (a). (c) In addition to registration requirements as provided in chapter 13-251, vessel operators

shall be required to possess a valid commercial activity permit.

(d) Persons issued commercial activity permits under this section shall be subject to fees as provided in these rules.

(e) Commercial activity permits issued by the department shall be made available upon demand by any enforcement officer, or authorized representative of the department." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

14. Section 13-231-56, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-56 Definitions, gross receipts. Gross receipts as used in this subchapter means all moneys paid or payable to the account of the [vessel owner] commercial activity permittee, for the rendition of services, or resulting from trade, business, commerce, or sales by the [vessel owner] commercial activity permittee when the services, trade, business, commerce, [and] or sales [have] having a direct relationship to the [vessel] commercial activity as it relates to the commercial activity permit." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

15. Section 13-231-57, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-57 Berthing or using commercial vessels in state [small boat harbors; signs and other structures] boating facilities. (a) This section is applicable [in] at all state [small boat harbors and boat launching] boating facilities, except Ala Wai and Keehi [small boat harbors] state boating facilities. This section is applicable to all commercial vessels including commercial fishing vessels engaged in charter fishing or any other trade or business; provided that commercial fishing vessels are exempt from this section if the total income derived from the use of the vessel is generated through the sale of fish or permitted coral.

(b) [No] A commercial vessel owner shall be required to possess a valid commercial activity permit in order to load or discharge passengers or cargo or engage in any other commercial activity at any [small boat harbor] state boating facility [unless the owner possesses a regular mooring permit and a valid commercial permit issued by the department in accordance with this chapter]. [The foregoing restrictions shall not apply to any commercial vessel operated in connection with the lease of premises at a small boat harbor.]

(c) Notwithstanding subsection (b), the department may authorize the owner of a transient or visiting commercial vessel engaged in a trade or business elsewhere to:

(1) Carry passengers for hire in the above listed [small boat harbors] state boating

facilities if the vessel [will be so engaged as] is a registered participant in a bona fide fishing tournament;

- (2) While on cruise, off-load and load passengers in the above listed [small boat harbors] state boating facilities if those passengers are embarked elsewhere or bound for another destination; [provided that a reservation for a berth was made in advance and space is available;] or
- (3) Embark and disembark passengers [occasionally and] infrequently, not exceeding [eight times in a calendar year on a special charter when approved not less than seven days in advance of the voyage] twelve days in a calendar year with prior written approval by the department. Violation of this subsection may result in the suspension of the commercial activity permit and preclude use of the state boating facility on the island where the violation occurred for a period not to exceed one year.

(d) [A use permit shall automatically expire upon the department's notice to vacate, if any] Any commercial vessel owner or the owner's authorized representative granted a temporary mooring permit under [section 13-231-57] subsection (c) who engages in a trade or business contrary to the provisions of the commercial activity permit issued for the vessel while authorized to be moored in the above listed [small boat harbors] state boating facilities may be required to appear before the board of land and natural resources and pay any penalties that may be assessed as described in section 13-230-4." [Eff 2/24/94; am

] (Auth: HRS §§200-2, 200-4, 200-14.5, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-14.5, 200-22, 200-24)

16. Chapter 13-231, Hawaii Administrative Rules, is amended by adding a new section 13-231-57.1 to read as follows:

"§13-231-57.1 Berthing commercial Waikiki catamarans at the Ala Wai state boating facility. Commercial catamarans authorized by the department to operate to and from Waikiki beach for hire may be allowed to moor in Ala Wai state boating facility at locations leased for commercial purposes after the commercial vessel owner has obtained a mooring permit." [Eff

] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

17. Section 13-231-58, Hawaii Administrative Rules, is amended to read as follows:

"13-231-58 Limitations on the number of commercial activity permits for vessels assigned [permanent] moorings. [(a) The total number of valid commercial permits which may be issued for vessels assigned permanent mooring in Manele small boat harbor shall not exceed

ten per cent of the available berths.]

[(b)] (a) The total number of valid commercial activity permits [which] that may be issued for vessels assigned [permanent] mooring in the following [small boat harbors] state boating facilities are:

<u>[Harbor]</u> <u>State boating facility</u>	<u>Number of commercial activity permits</u>
(1) Ala Wai	0
(2) Keehi	0
(3) Heeia Kea	7
(4) Haleiwa	[8] <u>12</u>
(5) Waianae	[15] <u>30</u>
(6) Nawiliwili	[10] <u>15</u>
(7) Port Allen	12
(8) Kikiaola	[3] <u>7</u>
(9) Kukuiula	[4] <u>5</u>
(10) Hana	2
(11) Kaunakakai	9
<u>(12) Hale o Lono</u>	<u>5</u>
[(12)] <u>13</u> Lahaina	[30] <u>31</u>
[(13)] <u>14</u> Maalaea	[29] <u>28</u>
[(14)] <u>15</u> Honokohau	[120] <u>135</u>
[(15)] <u>16</u> Kawaihae (north)	4
[(16)] <u>17</u> Kawaihae (south)	14
[(17)] <u>18</u> Kailua-Kona	[3] <u>16</u>
[(18)] <u>19</u> Keauhou	6
[(19)] <u>20</u> Wailoa	20
[(20)] <u>21</u> Reed's Bay	3
<u>(22) Manele</u>	<u>2</u>

[(c) Notwithstanding the provisions of subsections (a) and (b) limiting the number of

commercial permits which may be issued, the owner of a commercial vessel holding a regular mooring permit and a valid commercial permit on the effective date of these rules for the above listed small boat harbors may retain and apply for reissuance of the commercial permit, provided that all other requirements of these rules are met.]

[(d)] (b) [Except for Lahaina Harbor, the provisions of subsection (b) limiting the number of commercial permits which may be issued for vessels moored in a small boat harbor shall not preclude the owner of a vessel moored elsewhere holding a commercial permit for that small boat harbor from being issued a regular mooring permit for the small boat harbor and retaining] Upon the approval by the department, a person or corporation possessing a valid commercial activity permit for a vessel moored elsewhere may be issued a regular mooring permit at a state boating facility listed in subsection (a), and retain the commercial activity permit, provided that the permittee relinquishes the vessel moored elsewhere permit and that the total number of valid commercial activity permits for vessels moored elsewhere shall be reduced accordingly. [The owner of a vessel issued a] A regular mooring [permit] permittee [and] who possesses a valid commercial activity permit may, [subject to prior approval of the department,] relinquish the regular mooring permit and retain the commercial activity permit, provided that the total number of valid commercial activity permits for vessels moored in the [small boat harbor] state boating facility plus the number of commercial activity permits for vessels moored elsewhere are not exceeded, and that the category of commercial activity permits assigned to vessels moored elsewhere pursuant to section 13-231-59(c) shall not exceed the passenger capacity of the vessel formerly operated in the state boating facility. [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

18. Section 13-231-59, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-59 Limitations on commercial activity permits for vessels moored elsewhere. (a) [The department recognizes that it may be necessary or desirable to operate a commercial vessel from more than one small boat harbor, and that lack of mooring facilities in certain areas has required numerous vessels to establish permanent moorings offshore, outside of the small boat harbors of intended use. Therefore, notwithstanding] Notwithstanding section 13-231-57, the department may issue, on a case by case basis, a limited number of commercial activity permits to [owners of vessels moored] moor elsewhere [for use of small boat harbor facilities] in an offshore mooring area when there are no regular mooring permits available within a harbor provided that [The number and categories of those commercial permits shall be based on] the physical capacity of the [small boat harbor facilities to] pier, wharf, landing or ramp within the harbor can accommodate the additional volume of activity expected to be generated by the [additional permits,] commercial activity. [and shall be determined by the] The department shall determine the physical capacity of the pier, wharf, landing or ramp within the

harbor on a case-by-case basis for each [small boat harbor] state boating facility subject to the limitations listed in subsection (b).

(b) No commercial activity permittee possessing a vessel moored elsewhere shall use any [small boat harbor] state boating facilities for commercial [purposes] activities unless the owner of the commercial vessel moored elsewhere has been issued a commercial activity permit for that vessel, or the vessel is exempt from commercial activity permit requirements under the provisions of subsection 13-231-57(c) or as otherwise [permitted] allowed by the department. "Commercial purposes" as used in this subsection includes the staging, loading and discharge of passengers or supplies at a [state] state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

(c) The number of commercial activity permits for vessels moored elsewhere [which] that may be issued for each [small boat harbor] state boating facility shall be as follows:

- (1) Maalaea harbor: twenty;
- (2) Lahaina harbor: sixteen;
- (3) Manele and Heeia-Kea harbors: six each, except that for Heeia-Kea, commercial permits shall be limited to vessels having passenger categories I and II as listed in subsection (d), and may include the use of an auxiliary platform in an offshore operating area for which the owner has been issued a permit by the department; provided that there shall be no increase in the level of commercial activity by the permittee, as of June 19, 1990, the effective date of Act 208, SLH 1990; and
- (4) All other small boat harbors: no limit. These limits notwithstanding, all valid commercial permits for vessels moored elsewhere in effect on the effective date of these rules shall be permitted to remain in effect and be eligible for reissuance provided that all other provisions of these rules are met.]

<u>State boating facility</u>	<u>Number of commercial activity permits</u>
(1) <u>Maalaea</u>	<u>21</u>
(2) <u>Lahaina</u>	<u>15</u>
(3) <u>Manele</u>	<u>8</u>
(4) <u>Waianae</u>	<u>10</u>
(5) <u>Haleiwa</u>	<u>10</u>
(6) <u>Honokahou</u>	<u>20</u>
(7) <u>All others</u>	<u>none</u>

(d) Each commercial activity permit issued for a vessel moored elsewhere shall be assigned one of the following categories, depending on the passenger-carrying capacity of the

vessel named in the permit:

- (1) Category I- one to twenty-four passengers
- (2) Category II- twenty-five to forty-nine passengers
- (3) Category III- fifty to seventy-four passengers
- (4) Category IV- seventy-five to ninety-nine passengers
- (5) Category V- one hundred to one hundred forty-nine passengers
- (e) No commercial activity permit for vessels moored elsewhere shall be issued for

any vessel with a passenger-carrying capacity in excess of one hundred forty-nine, and no existing commercial activity permit issued for a vessel moored elsewhere shall be issued a permit whenever the owner seeks to increase the passenger-carrying capacity above the limit of the category to which the original permit was assigned.

(f) The department [reserves the right to] may impose further restrictions on the operation of commercial vessels moored elsewhere, on a case-by-case basis, as may be necessary to reduce congestion and achieve more efficient use of [small boat harbor] state boating facilities. Restrictions may include designation of docking times for passenger loading and unloading or fueling, and parking restrictions for patron and delivery vehicles. Additional restrictions shall be implemented by addenda to existing commercial activity permits issued by the department. [Refusal of] If a permittee fails to [accept or] comply with the additional restrictions, [implemented in this manner shall be cause for immediate] the department may revoke [termination of] the [use] commercial activity permit in accordance with section 13-231-6.

(g) Use of any vessel in violation of this section may be cause for the revocation of all permits issued by the department, in accordance with section 13-231-6, [termination of all small boat harbor use permits issued to the owner by the department] for the use of the state boating facility." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

19. Section 13-231-60, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-60 Allocation of commercial activity permits. (a) Commercial activity permits shall be issued to qualified applicants in the order in which applications are received by the department. Seniority begins on the date an application is received and accepted by the department as evidenced by the department date stamp on the application. The allocation procedures specified in subchapter 5, Allocation of berths, shall also govern the allocation of commercial activity permits under this section; provided that waiting lists for commercial activity permits shall be established and maintained separately from waiting lists for berth assignment.

(b) The sale or transfer of any corporation or other business entity while on the waiting list [which] that results in a change of the majority stockholder or person holding the majority interest in the business shall result in loss of seniority, and the applicant shall be placed

at the bottom of the waiting list.

(c) The department may reject an application for a commercial activity permit if the type of commercial activity is determined by the department to be inappropriate for the facility or area for which the permit is being requested, in addition to the grounds for rejection of an application for a permit listed in section 13-231-82.

(d) When a commercial activity permit becomes available for a vessel moored elsewhere, the commercial activity permit issued shall be of the same category as the commercial activity permit which was previously in effect.” [Eff 2/24/94

am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

20. Section 13-231-61, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-61 [Reissuance] Renewal of commercial activity permits. (a) Within ninety days of the expiration of a commercial activity permit, the department may inform the commercial activity permittee, in writing, that the commercial activity permit is due to expire.

[(a)] (b) Except for commercial activity permits issued through the public auction process, [The] the department [may] shall reissue a commercial activity permit provided that the commercial activity permittee has:

[(1)] The gross receipts during the twelve-month period under the commercial permit for which the application for reissuance has been submitted, equals or exceeds the following minimums as applicable:

(A)	Vessels used for bare boat (demise) charters and charter sail boats	\$ 7,000
(B)	Vessels registered by the State or documented by the U.S. Coast Guard to carry six passengers or less, including charter fishing boats	\$15,000
(C)	Vessels certified by the U.S. Coast Guard to carry seven to twenty-five passengers.	\$45,000
(D)	Vessels certified by the U.S. Coast Guard to carry twenty-five to forty - nine passengers	\$85,000

(E)	Vessels certified by the U.S. Coast Guard to carry fifty to ninety-nine passengers	\$125,000
(F)	Vessels certified by the U.S. Coast Guard to carry more than ninety-nine passengers	\$250,000
(G)	Vessels engaged in another trade or business not delineated and governed by an appropriate paragraph above	\$7,000; or]

- (1) Completed a new application, within sixty days of being informed by the department of the expiration of the commercial activity permit;
- (2) Provided a copy of the tax clearance certificate or a letter from the state department of taxation that confirms the applicant is paying taxes;
- (3) Provided proof of insurance coverage as described in section 13-231-65;
- (4) Provided a copy of the United States Coast Guard certificate of inspection for a vessel carrying more than six passengers;
- (5) Abided by rules and laws of the department, State, and city and county, as they relate to the specific business activity;
- (6) Abided by the special conditions of the commercial activity permit;
- (7) Paid all fees due the department for the commercial activity permit or any other permit associated with the commercial activity; and
- (8) Met the minimum revenue standard, in accordance with section 200-10, Hawaii Revised Statutes, which shall be the applicable yearly fee as provided in sections 13-234-25.

(c) The department may reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application. The applicant shall be afforded the opportunity to submit a new application upon the correction of the deficiencies cited in the notification of rejection of the original application.

(d) The department shall have thirty days from the departmental date stamp on the application to review the application and inform the applicant by certified return receipt mail of any deficiencies in the application or in the supporting documentation or of the decision not to renew a commercial activity permit.

(e) The commercial activity permittee shall have not more than thirty days from the date of the denial to initiate corrective action to address deficiencies as described in this section. Failure to initiate corrective action by the expiration date shall cause the permit to automatically expire and the permit shall be offered to the next applicant.

(f) Notwithstanding the conditions of subsection (e), the department may provide additional time to correct deficiencies if the department determines there is good cause.

(g) Withdrawal of an application for a commercial activity permit shall be in accordance with section 13-231-84.

(h) Any commercial activity permittee who is denied a renewal of a commercial activity permit upon the expiration of a commercial activity permit and who has followed the procedures outlined in this section, shall be allowed an informal review as provided in section 13-231-33.

(i) The commercial activity permittee may challenge the final recommendation of the informal review as described in section 13-231-33, and shall be allowed an administrative hearing as provided in section 13-231-31.

(j) Having met the conditions of this section, the commercial activity permittee may retain the commercial activity permit during the time the commercial activity permit is under review, except as provided in section 13-231-6(d) and (e).

(k) The commercial activity permittee shall have no expectation of property rights and shall not be afforded an informal review or administrative hearing when circumstances present themselves that preclude the renewal of a commercial activity permit, e.g., acts of God or war, privatization of a state boating facility, or the safe or efficient use of the state boating facility.

[(2) The permittee applies to the department in writing for reissuance of the permittee's commercial permit and concurrently presents evidence that any failure to generate gross receipts from the operation of the permittee's vessel as prescribed in this subsection was due to:

- (A) The sinking, loss, or destruction of the permittee's vessel;
 - (B) The permittee's vessel being inoperative in excess of sixty days due to disability of the permittee;
 - (C) The permittee's vessel was rendered inoperative in excess of sixty days due to damage to the vessel, or due to the necessity of replacing essential parts and gear, provided that reasonable and diligent efforts by the permittee to secure such items necessary to repair the vessel or replacement of parts is demonstrated; or
 - (D) Where conditions and circumstances are demonstrated wherein a reissuance of the permittee's commercial permit would be fair and warranted, and the application for reissuance is approved by the department; and
- (3) All fees and charges due and payable to the department have been paid and no violations are outstanding.

(b) No commercial permit shall be issued to any permittee whose commercial permit has been terminated for cause, provided that the permittee may apply for a new commercial permit after one year has expired from the date of termination of the commercial permit, all fees and charges owing the State have been paid, and the permittee is in compliance with federal and state laws.

(c) A corporation must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of twelve

months in order to retain use permits upon the transfer of any interest in that corporation.]" [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

21. Section 13-231-62, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-62 Transferability of commercial activity permits. (a) Commercial activity permits issued to individuals.

- (1) A commercial activity permit issued to an individual is non-transferable, so that whenever the permittee parts with possession or transfers the title or interest in the vessel identified in the commercial activity permit to another person by any arrangement, the commercial activity permit shall expire except as provided [herein] in this section with respect to the original permittee. The new possessor, transferee, or owner of the vessel shall have no right to use the commercial activity permit;
 - (2) An original permittee holding both a commercial activity permit and a regular mooring permit, upon written application and approval by the department may retain the commercial activity permit, provided that within thirty days the permittee moves into the [small boat harbor] state boating facility another vessel owned by the permittee pursuant to the provisions of section 13-231-13; and
 - (3) An original permittee holding a commercial activity permit and moored elsewhere may, upon written application to and approval by the department retain the commercial activity permit, provided that within thirty days the permittee resumes operation with another vessel owned by the permittee pursuant to the provisions of sections 13-231-13 and 13-231-61.
- (b) The following rights, conditions, and restrictions apply to commercial activity permits issued to a corporation or other business entity.
- (1) Notwithstanding section 13-231-13, a corporation or other business entity holding a valid commercial activity permit may transfer any or all stock or interest and retain the commercial activity permit and all other valid [small boat harbor] state boating facility use permits in effect on the date of transfer, provided that the corporation or other business entity has [been in continuous operation as evidenced by the submission of monthly reports of gross receipts for a minimum period of one full year] paid the appropriate fees as provided in sections 13-234-25 or 13-256-11, and meets all requirements necessary for issuance of a commercial activity permit. The department shall be notified within ten working days of:
 - (A) All transactions that amount to a transfer of ten per cent or more of the stock or interest in the firm by owners of record on the effective date of

- these rules;
- (B) The transfer of any stock or interest [which] that results in a change of the principal stockholder or owner; and
 - (C) The business transfer fee is paid on or before the date of transfer; and
- (2) A commercial activity permit issued to a corporation or other business entity shall automatically expire:
- (A) Upon the voluntary or involuntary dissolution of the corporation or business entity; or
 - (B) If the vessel or vessels operated under the commercial activity permit are sold or otherwise transferred and not replaced in accordance with the provisions of section 13-231-13(b)[; or
 - (C) If the permittee fails to operate the vessel for which the commercial permit is issued for a period in excess of sixty days, except as provided in section 13-231-61(a)(2), and except when the permittee provides advance notification to the department in writing that operations will be temporarily suspended for a specific period not to exceed four months].” [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

22. Section 13-231-63, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-63 Retention of berth upon termination of commercial activity permit. The owner of a vessel moored in any of the above listed [small boat harbors] state boating facilities whose commercial activity permit has been [cancelled] canceled at the owner's request, expired, or revoked by the department pursuant to the provisions of these rules may continue to moor the vessel in the [small boat harbor] state boating facility in accordance with the owner's regular mooring permit and [to] utilize the vessel for non-commercial purposes if the vessel and the owner conform to the conditions set forth in these rules to renew or maintain a regular mooring permit.” [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

23. Section 13-231-64, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-64 Fees and charges. Fees and charges for commercial [vessels] activity permits shall be as [prescribed] provided in chapter 13-234.” (Eff 2/24/94

am] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

24. Section 13-231-65, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-65 Insurance requirements. [A permittee issued a commercial permit shall, concurrently with the execution of the permit, tender to the department a copy of either a comprehensive general liability insurance policy or policies or a protection and indemnity insurance policy, or a certificate of insurance in lieu thereof, evidencing that such policy has been and is in force, with a combined single limit of not less than \$300,000 for commercial vessels not authorized to carry passengers and for those authorized to carry not more than six passengers; not less than \$500,000 for vessels authorized to carry more than six passengers, but less than twenty-six passengers; and not less than \$750,000 for vessels authorized to carry more than twenty-five passengers for bodily injury and damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a limitation on the liability of the permittee for any injury or damage proximately caused by it. This] (a) In addition to the coverage requirements provided in this section, all insurance shall:

- (1) Be issued by an insurance company or surety company authorized to do business in the State and approved in writing by the department;
- (2) Name the State as an additional insured;
- (3) Provide that the department shall be notified at least thirty days prior to any termination, cancellation, or material change in its insurance coverage;
- (4) Cover all injuries, losses, or damages arising or resulting from, [growing out of,] or caused by any acts or omissions of the permittee, its officers, agents, employees, [invitees] guests, or licensees, in connection with the permittee's use or occupancy of the premises; and
- (5) Be maintained and kept in effect at the permittee's own expense throughout the life of the permit. [The permittee shall submit evidence to the department of renewals or other actions to indicate that the insurance policy remains in effect as prescribed herein.]

(b) Any commercial activity permit issued by the department requires the holder to provide proof of a minimum of \$1,000,000 protection and indemnity liability insurance.

(c) Commercial activity permittees utilizing shuttles for ground transportation for passengers must show proof of the following insurance coverage:

<u>Vehicle capacity</u>	<u>Minimum property damage liability coverage per occurrence</u>	<u>Minimum bodily injury liability coverage per occurrence</u>

(1)	<u>Vehicles capable of carrying one to seven passengers</u>	<u>\$ 50,000</u>	<u>\$100,000</u>
(2)	<u>Vehicles capable of carrying eight to seventeen passengers</u>	<u>\$ 50,000</u>	<u>\$ 100,000</u>
(3)	<u>Vehicles capable of carrying a maximum of twenty-five passengers</u>	<u>\$300,000</u>	<u>\$ 750,000</u>
(4)	<u>Vehicles capable of carrying twenty-six or more passengers</u>	<u>\$500,000</u>	<u>\$1,000,000</u>

(d) Piers, dock structures or moorings, constructed in accordance with section 13-232-43, shall require liability insurance with minimum limits of \$300,000 for bodily injury to one person and \$500,000 for bodily injury to more than one person per occurrence and \$100,000 for damage to the property per occurrence or the equivalent of a \$500,000 combined single limit liability policy.

(e) Prior to issuance of any permit for vessel repair on state property, the applicant shall provide to the department a refundable security deposit of \$300 and a certificate of insurance for a comprehensive protection and indemnity liability insurance policy with a combined single limit coverage of not less than \$300,000, naming the State as an additional insured.

(f) A comprehensive protection and indemnity liability insurance policy, with a combined single limit coverage of not less than \$300,000, shall be required for dry storage.

(g) Insurance requirements for film permits shall be in accordance with the State film office requirements.

(h) The applicant of a business or non-business sponsored amateur or professional event shall possess insurance coverage for personal injury and property liability of not less than \$500,000 per person, with an aggregate of not less than \$1,000,000.

(i) The specification of limits contained in this section shall not be construed in any way to limit the liability of the permittee for any injury or damage directly caused by the permittee.

(j) The permittee shall submit evidence to the department of renewals or other actions, at the time of the action or renewal, to indicate that the insurance policy remains in effect.” [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

25. Section 13-231-66, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-66 Limitation on number of berths held by a commercial activity permittee. No person holding a valid commercial [vessel] activity permit for a commercial vessel moored in any of the [small boat harbors] state boating facilities listed in section 13-231-57 shall be issued a [use] mooring permit authorizing the person to moor more than two commercial vessels in one of these [small boat harbors] state boating facilities except temporarily pursuant to section 13-231-57(c) or as provided by section 13-231-69; provided further, that any person holding valid [use] mooring permits on the effective date of these rules authorizing the mooring of more than two commercial vessels in any of these [small boat harbors] state boating facilities may continue to moor the person's vessels in the [small boat harbors] state boating facilities subject to compliance with the conditions of the [use] mooring permit and this chapter.”
[Eff 2/24/94

am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)
(Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

26. Section 13-231-67, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-67 Limitation on commercial activity permits issued for the use of state boat [launching] ramps. (a) State boat [launching] ramps were constructed for the primary purpose of providing access to the waters of the State for trailered boats. [Therefore, commercial] Commercial activity permits issued for the use of state boat [launching] ramps [facilities] shall be restricted to boats that are regularly transported by land and launched and recovered from boat [launching] ramps [and] needed or used in the course of [doing business] conducting commercial activities.

(b) A commercial activity permit shall be required for any [trailered] vessel [which] that is rented [off-site] at a site other than a state boating facility, including kayaks and other motorized or non-motorized rented vessels that may [but launches] launch or [recovers] recover from a state boat [launching] ramp or other state boating facility. The owner of [a trailered] the vessel shall be required to obtain a [commercial] commercial activity permit and comply with all other rules of the department governing commercial vessel activities. [Notwithstanding the limitation of the number of commercial permits which may be issued for launching ramps in subsections (d)(3) through (d)(9) below, the owner may apply for and may be issued a commercial permit for the number of vessels owned and registered in furtherance of its commercial use by the business on the effective date of these rules.] Vessels registered to boat dealers and manufacturers and used for the purpose of conducting sea trials and instruction of prospective owners shall be exempt from commercial activity permit requirements.

[(b)] (c) No commercial activity permits for the use of state boat [launching] ramps shall be issued for the purpose of embarking or disembarking passengers or cargo by small craft or lighter from a vessel [moored] offshore. Unless otherwise allowed by the department, the maximum size of a vessel that may be launched or recovered from a state boat ramp shall be

limited to vessels that are transported by a trailer on State highways that meet the requirements of section 291-34, HRS, including the need for any special permits for non-standard or oversized loads. Exempt from this subsection are those vessels that utilize the small boat ramps for dry dock purposes.

[(c)] (d) A commercial activity permit issued for the use of a state boat [launching] ramp shall also be valid for all other state boat ramps on the same island [at which] where commercial activities are [permitted] allowed except those listed in subsection [(d)] (e); provided that the permittee [shall indicate] indicates which [launching] boat ramp is expected to be the location of primary use and unless otherwise provided by law, the commercial activity permittee shall pay all [the] fees due in accordance with section 13-234-25 [derived from two percent of gross revenues shall be paid to that account]. No commercial activity permit shall be issued for a [launching] boat ramp located on an island other than the place of business of the permittee.

[(d)] (e) The maximum number of commercial activity permits [which] that may be issued for the use of the following [launching] boat ramps are:

<u>Small boat ramps</u> <u>commercial activity permits</u>	<u>Number of permits</u>
(1) Ala Wai	[-]none
(2) Keehi	[-]none
[(3)] Heeia Kea	-7]
[(4)] (3) Maunalua Bay	[-5] <u>8</u>
(4) <u>Haleiwa</u>	<u>15</u>
(5) <u>Waianae</u>	<u>15</u>
(6) <u>Maalaea</u>	<u>none</u>
[(5)] (7) Mala	[-15] <u>18</u>
[(6)] (8) Kihei	[-15] <u>17</u>
[(7)] (9) Manele	[-]3
[8] (10) Kaunakakai	[-]5
(11) <u>Kikiaola</u>	<u>6</u>
[(9)] (12) Kukuiula	[-]6
(13) <u>Port Allen</u>	<u>5</u>
(14) <u>Kawaihae</u>	<u>10</u>

(15) <u>Honokahou</u>	<u>12</u>
(16) <u>Kailua Pier</u>	<u>8</u>
(17) <u>Puako</u>	<u>6</u>
(18) <u>Wailua River</u>	<u>15</u>
[10] (19) All others	[-no limit] <u>10"</u>

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

27. Section 13-231-68, Hawaii Administrative Rules, is amended to read as follows:

“§13-231-68 Signs and other structures at a state small boat harbor. ***

(b) [Signs] One sign per berth identifying commercial activities posted or displayed within a state small boat harbor, where allowed, shall be limited to twelve square feet maximum sign area and be designed in accordance with the guide for small boat harbor signs provided by the department. Structures for ticket booths shall be limited to thirty-six square feet maximum and be designed in accordance with the guide for ticket booths provided by the department.”

[Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-10, 200-22, 200-24)

28. Section 13-231-71, Hawaii Administrative Rules, is adopted to read as follows:

“§13-231-71 Commercial activity permits for manually-propelled vessels. (a) Any commercial manually-propelled vessel operation, either for individual rental or guided tour operation, shall be required to possess a valid commercial activity permit to use, launch or retrieve manually-propelled commercial vessels on the waters of the State.

(b) Commercial activity permits for commercial manually-propelled vessels shall be distributed as described in section 13-231-60, renewal of commercial activity permits for commercial manually-propelled vessels shall be in accordance with section 13-231-61 and transferability of a commercial activity permit for commercial manually-propelled vessels shall be in accordance with section 13-231-62.

(c) The manually-propelled commercial activity permit includes a ramp decal for trailered vessels, therefore, a separate application for ramp decals shall not be required.

(d) The department shall maintain a list of all commercial manually-propelled vessels by the commercial activity permittee's name and decal numbers.

(e) The manually-propelled commercial activity permittee shall display the vessel identification decal provided by the department on the bow of the vessel.

(f) The commercial activity permittee shall ensure that all manually-propelled vessels are operated with due care for public safety and defend, hold harmless, and indemnify the State, its officers, agents, and employees from and against all claims or demands for damages, including claims for property damage, personal injury, or death arising out of or incidental to the operations permitted under this section.

(g) The commercial activity permittee shall require customers to wear a personal flotation device while operating a manually-propelled vessel when on the ocean waters of the State.

(h) In addition to the application for a commercial activity permit for manually-propelled vessels, the applicant shall:

(1) Possess general and marine liability insurance in accordance with section 13-231-65 (a) and (b);

(2) Make available to customers maps or charts that show the boundaries of the area(s), outlined restricted zones, and dangerous areas and conditions; and

(3) Establish a safety instruction program for customers that includes, but is not limited to, the use of a personal flotation device, and notification of hazardous conditions or areas and restricted areas.

(i) Individuals conducting guided tours shall carry a current adult cardio-pulmonary resuscitation (CPR), and standard first aid and water safety training certificates while on the guided tour. A list of water safety training certificates acceptable to the department shall be provided to the applicant.

(j) When guided tours are conducted, the guide to customer ratio shall be one guide for eight customers, unless otherwise provided by rule.

(k) A manually-propelled vessel commercial activity permittee shall be required to pay a fee for manually-propelled commercial vessels in accordance with section 13-234-25(b)." [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

29. Chapter 13-231, Hawaii Administrative Rules, is amended by adding a new section 13-231-78 to read as follows:

"§13-231-78 Kailua-Kona state boating facility. The Kailua-Kona pier and Kailua Bay offshore mooring area were designated state boating facilities effective July 1, 1993. All commercial and recreational vessels and other commercial and recreational activity utilizing these boating facilities are subject to these rules."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-10,

200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

30. Section 13-232-82, Hawaii Administrative Rules, is amended to read as follows:

"§13-232-43 Construction of structures. ***

(c) The permittee shall[, concurrently with the execution of the permit, deliver to the State a comprehensive general liability insurance policy or policies, or a certificate of insurance in lieu thereof, evidencing that such a policy has been issued and is in force, with minimum limits of not less than \$300,000 for bodily injury to one person and \$500,000 for bodily injury to more than one person per occurrence and \$100,000 for damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a limitation of the liability of the permittee for any injury or damage. Such insurance shall:

- (1) Be issued by an insurance company or surety company authorized to do business in the State of Hawaii or approved in writing by the department;
- (2) Name the State of Hawaii as an additional insured;
- (3) Provide that the department of land and natural resources shall be notified at least thirty days prior to any termination, cancellation, or material change in its insurance coverage;
- (4) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee, its officers, agents, employees, invitees, or licensees in connection with the permittee's use or occupancy of the premises; and
- (5) Be maintained and kept in effect at the permittee's own expense throughout the life of the permit.] obtain insurance coverage as provided in section 13-231-65."

***"

[Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-12, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-12, 200-22, 200-24)

31. Section 13-232-82, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-82 Review, acceptance, or rejection of applications. (a) The department shall examine and determine the genuineness and regularity of each application for a mooring or other [small boat harbor use] state boating facility permit and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity

of the application.

- (b) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.
- (c) An application shall not be accepted for consideration and shall be rejected if:
 - (1) The application fee is not paid at the time the application is made;
 - (2) The applicant is delinquent in payment of any [moneys] fees due and payable to the department;
 - (3) The applicant has pending a citation for violation of any of the department's rules except as provided for in sections 13-231-6 or 13-231-61; or
 - (4) The category or type of mooring requested is inappropriate for the vessel to be moored by the applicant and will not, therefore, afford maximum, safe, convenient, and efficient utilization of small boat harbor facilities as determined by the department pursuant to section 13-231-80.
- (d) Upon rejection of an application, the department shall inform the applicant, in writing within [a reasonable time] thirty days, that the person's application has not been accepted for consideration and has been rejected and the reasons [therefor] for the rejection. The applicant shall be afforded the opportunity to submit a new application upon the correction of deficiencies cited in the notification of rejection of the original application." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-9, 200-10, 200-22, 200-24)

32. Section 13-232-41, Hawaii Administrative Rules, is amended to read as follows:

“§13-232-41 Storage. (a) No person shall store, place, leave, deposit, or abandon any vessel, structure, supplies, material, equipment, gear, object, or substance [on catwalks, piers, sidewalks, roads, parking areas, or any other public area at a small boat harbor] anywhere in any state boating facility, except [vessels or objects may be stored]:

- (1) In areas set aside by the department for storage purposes; or
- (2) Upon prior written consent by the department.
- (b) The permittee shall be responsible for removing, in accordance with all State and federal laws and rules, all materials stored at a state boating facility at the termination or expiration of a permit or upon vacating the state boating facility.
- (c) The permittee shall be responsible for any costs associated with the removal, disposal or final settlement at the termination or expiration of a permit, or upon vacating the state boating facility. The permittee shall forfeit the permit deposit, and pay any fees assessed by the department for the removal of any objects belonging to the permittee that remain at the state boating facility after the termination or expiration of a permit or upon vacating the state boating facility.
- (d) Violators of these rules shall be subject to penalties as provided by law.”

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-22, 200-24)
(Imp: HRS §§200-2, 200-3, 200-22, 200-24)

33. Section 13-233-6, Hawaii Administrative Rules, is amended to read as follows:

“§13-233-6 Parking and parking fees. [Except as otherwise authorized by the department, no person shall stop, park, or permit to remain halted, a motor vehicle in a small boat harbor:

- (1) In front of a driveway or land side of a launching ramp;
- (2) For the purposes of washing, polishing, greasing, or repairing of a vehicle except for those minor repairs necessary to remove the vehicle to an authorized area or from a small boat harbor;
- (3) Other than in accordance with officially posted signs; or
- (4) For more than seventy-two hours.] (a) Unless otherwise posted:
 - (1) Motor vehicle parking at a state boating facility is allowed; and
 - (2) Parking in excess of seventy-two hours requires a quarterly parking permit issued by the department, as provided in section 13-233-29.
- (b) Except as provided by section 13-233-27, motor vehicles are prohibited from:
 - (1) Blocking driveways or designated parking stalls; or
 - (2) Parking in boat ramps, except for the time it takes to launch or recover a vessel.
- (c) Motor vehicle parking areas shall not be used for automobile servicing or maintenance, except for those instances where a minor repair is necessary for removing the vehicle to an authorized area.
- (d) Parking fees, if any, shall be as posted and shall not exceed rates in adjacent areas as may be established in adjacent areas.
- (e) Parking concessions operating under a lease issued by the department shall be exempt from the requirements of this section.
- (f) The department may detain or remove any vehicle that violates the designated parking rules or any vehicle that poses an obstruction or hazard, at the owner's risk and expense. The department is not liable for any resulting damage.
- (g) The owner assumes no risk or expense if a vehicle is legally parked and is moved for safety reasons.
- (h) During special events, parking may be restricted.
- (i) Shuttling of commercial passengers to and from a state boating facility may be required to maximize efficient public utilization of the state boating facility. The details shall be established in the commercial activity permit.
- (j) It shall be a violation of this section for any person to disregard an official parking direction given by an enforcement officer or a representative of the department.” [Eff

2/24/94 am] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

34. Section 13-233-7, Hawaii Administrative Rules, is repealed.

[“§13-233-7 Public parking. As may from time to time be prescribed by the department, no person shall use any public parking area without payment of parking fees and charges in areas where the fees and charges are properly designated by posted signs. The department may establish such areas as convenient and efficient public use of a small boat harbor may dictate.”] [Eff 2/24/94 R] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

35. Section 13-233-8, Hawaii Administrative Rules, is repealed.

[“§13-233-8 Removal of vehicles. The department shall have the authority to detain, tow, move, or cause to be moved to an impounding area, at the owner's risk and expense and without liability for any damage which may result, any motor vehicle:

- (1) For nonpayment of parking charges when the vehicle is parked in parking areas operated by the department in a small boat harbor;
- (2) Which has been parked continuously in a vehicular parking area operated by the department in a small boat harbor for a period of more than seventy-two hours, except when prior arrangements have been made therefor;
- (3) When the position or location of the vehicle in a small boat harbor creates a nuisance or a hazard; provided, that any detention, towing, or moving, done or caused to be done by the department, of any vehicle legally parked at a small boat harbor, shall not be at the owner's risk and expense; and
- (4) When parked in violation of section 13-233-6.]” [Eff 2/24/94 R] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

36. Section 13-233-10, Hawaii Administrative Rules, is repealed.

[“§13-233-10 Parking in construction areas and on special occasion. The chairperson may whenever in the chairperson's judgment it is deemed necessary, prohibit or restrict the parking of any vehicle on either or both sides of any roadway, parking lot, or other location or portion thereof, constituting all or part of an area affected by construction, repairs, or maintenance activities, a part of the route of a parade or a procession, or on any special occasion, and also upon any roadway, parking lot, or other location adjacent thereto by the erection or placement of temporary signs setting forth such restrictions. When the signs are

erected or placed prior to construction, repairs, maintenance, parade, procession, or special occasion, it shall be unlawful to park or leave unattended any vehicle in violation of the signs. The department may remove or cause to be removed at the owner's expense, any vehicle left unattended or parked in violation of the signs.”] [Eff 2/24/94 R] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

37. Section 13-233-14, Hawaii Administrative Rules, is amended to read as follows:

"§13-233-14 Parking permits; Lahaina [small boat harbor] state boating facility. (a) [This] In addition to the requirements provided in sections 13-233-6 and 13-233-29, the following shall apply [section is applicable at all times] within the Lahaina state [boat harbor] boating facility. [Parking, stopping, or standing within the Lahaina boat harbor is restricted to stalls established, marked, and designated by the Maui district manager, division of boating and ocean recreation.]

[(b) Parking, stopping, or standing in the stalls is limited to vehicles displaying a valid regular or temporary parking permit issued by the department; provided that a person may stop or stand any vehicle in a parking stall or elsewhere in the harbor for a period not to exceed ten minutes for the purpose of and while actually engaged in loading or unloading the vehicle.]

[(c)] (b) [Regular] Quarterly parking permits[,] for Lahaina state boating facility shall not [to] exceed one hundred eighty at any time [, shall be allocated as follows:

- (1) First priority. The owner, co-owner, or master of a registered or documented vessel moored in Lahaina boat harbor in accordance with a valid regular mooring permit who applies for a parking permit shall have priority for one parking permit over other applicants for a parking permit on a one-to-a-boat basis. Fee per vehicle shall be \$12 per calendar quarter except the fee shall be \$30 per calendar quarter if the permittee also has a commercial mooring permit.
- (2) Second priority. If all of the applicants with a priority for a parking permit pursuant to paragraph (1) have been issued permits, the owner, co-owner, or master of a registered or documented vessel not moored in Lahaina boat harbor but principally used in the waters surrounding the Island of Maui, who applies for a parking permit, shall have priority for one parking permit over other applicants enumerated in paragraph (3). The eligible individual shall personally apply, presenting proof of vessel ownership or designation as master of the vessel at the time. Fee per vehicle shall be \$15 per calendar quarter except the fee shall be \$30 per calendar quarter if the permittee also has a commercial mooring permit.
- (3) Third priority. If all of the applicants for parking permit enumerated in paragraphs (1) and (2) have been issued permits and the number of permits issued does not exceed one hundred eighty, the owner or employee of a person, firm, business, or organization:

- (A) Operating a vessel, moored in the small boat harbor or adjacent waters, engaged in any trade or business; or
 - (B) Operating an activity under the provisions of a lease or other agreement authorizing a business or commercial activity at the small boat harbor who applies for a parking permit shall have priority for one parking permit over other applicants enumerated in paragraph (4). Fee per vehicle shall be \$30 per calendar quarter.
- (4) Fourth priority. If all of the applicants for a parking permit enumerated in paragraphs (1), (2), and (3) have been issued permits and the number of permits issued does not exceed one hundred eighty, one parking permit in addition to the permit issued to the owner, co-owner, or master pursuant to paragraph (1) may be offered to the spouse or legal dependent of an owner, co-owner, or master of a registered or documented vessel moored in Lahaina boat harbor in accordance with a valid regular mooring permit, who applies for a parking permit. Fee per vehicle shall be \$12 per calendar quarter except the fee shall be \$30 per calendar quarter if the permittee also has a commercial mooring permit.
- (5) Permits shall be issued on a first-come, first-served basis to applicants on a chronological waiting list established for each priority category] and shall be issued in accordance with section 13-233-29(f).
- [(d)] (c) A temporary parking permit[, valid] shall be required for parking for up to seventy-two hours[, may be secured by the owner of a vessel, other than a vessel engaged in a trade or business, who holds a valid use permit authorizing the owner to moor the vessel in the small boat harbor, for use by bona fide guests. The temporary parking permit card or device issued by the department shall be displayed in or on the vehicle so as to be clearly visible from the outside during the period that the vehicle is parked at the small boat harbor. Fee per vehicle shall be \$2 per twenty-four hour period or fraction thereof] and the permittee shall pay a temporary parking permit fee as provided in section 13-233-29.
- [(e)] (d) Fees for [a regular] quarterly parking [permit] permits shall be in accordance with section 13-233-29 [issued after the first month of a calendar quarter shall be prorated on a monthly basis, a fraction of a month being considered a full month. No permit shall be issued until the prescribed fee is paid].
- (f) Each person holding a regular parking permit shall be issued not more than one parking permit card or device for each parking permit held. The parking permit card or device issued by the department shall be displayed in or on the vehicle so as to be clearly visible from the outside when the vehicle is parked in the small boat harbor during the period that the parking restrictions are in effect as prescribed in subsection (j)(1).
- (g) If a valid parking permit card or device becomes lost, destroyed, stolen, mutilated, or illegible, the permittee shall immediately:
- (1) Notify the department in writing describing the circumstances of the loss or

- destruction and certifying to its loss; or
- (2) Deliver to the department any mutilated or illegible permit card or device. If this is done, a replacement permit card or device may be issued to the permittee upon application and payment of a fee of \$1.
 - (h) A parking permit may be canceled by a permittee upon thirty days written notice to the department. The parking permit card or device issued by the department is the property of the State. Upon cancellation by a permittee, no credit or refund for any unexpired month or months shall be given unless the permit card or device is returned to the department. No credit or refund shall be given for portions of a month upon cancellation or revocation of a permit.
 - (i) The department reserves the right to further restrict the issuance of parking permits to those who observe the small boat harbors rules and make full and timely payments of fees and charges. A parking permit may be revoked as provided in section 13-233-6. Upon revocation, the permittee shall surrender the parking permit card or device issued by the department.
 - (j) It shall be a violation of this section for any person:
 - (1) To cause, allow, or permit any vehicle within the person's control to be parked, stopped or standing within the small boat harbor except as provided in subsection (b).
 - (2) To park, stop, or stand any vehicle across any line or marking of a parking stall or in such a manner that the vehicle shall not be entirely within the stall designated by such lines or markings.
 - (3) To permit another person not entitled thereto, to use or have possession of a parking permit card or device issued by the department.
 - (4) To alter, forge, counterfeit, or imitate a parking permit card or device issued by the department.
 - (5) To possess or use a parking permit card or device, knowing it to have been altered, forged, counterfeited, or imitated.
 - (6) To avoid or attempt to avoid compliance with this section by displaying in or on a vehicle, a parking permit card or device not authorized or issued by the department for the vehicle.
 - (7) To enclose, obstruct, or cause to be enclosed or obstructed any parking stall or portion thereof unless a permit has been obtained from the department.
 - (8) To disregard any official direction, instruction or restriction indicated by or on an official sign posted in a parking zone.
 - (k) A person who has violated this section may be fined as provided in section 13-230-4. In addition, violations of this section may result in revocation of a parking permit pursuant to section 13-231-6.]” [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

38. Chapter 13-231, Hawaii Administrative Rules, is amended by adding a new section 13-233-15 to read as follows:

"§13-233-15 Ground transportation. (a) No person shall operate a bus, van or other vehicle possessing a certificate of public convenience and necessity at a state boating facility for the purpose of standing, parking or waiting to pick up passengers at locations without first obtaining a permit issued by the department.

(b) The annual permit fees and insurance requirements are described in section 13-234-38.

(c) Buses, vans or other vehicles owned, leased, or operated by a commercial activity permittee to transport passengers to or from the vessel shall be exempt from the provisions of this section.

(d) Notwithstanding the provisions of this section, taxi cab companies or taxi cab drivers shall not be required to obtain a permit to transport people to and from a state boating facility." [Eff] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

39. Chapter 13-233, Hawaii Administrative Rules, is amended by adding a new section 13-233-16 to read as follows:

"§13-233-16 Parking permits; Maalaea state boating facility. (a) In addition to the requirements as provided in sections 13-233-6 and 13-233-29, the following shall apply within the Maalaea state boating facility:

(1) Quarterly parking permits for Maalaea state boating facility shall not exceed the total number of mooring permits for slips in the state boating facility.

(2) Fees for parking permits shall be in accordance with section 13-233-29." [Eff] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

40. Section 13-233-20, Hawaii Administrative Rules, is amended to read as follows:

"§13-233-20 Establishment and designation of parking meter zones. [Parking meter zones are hereby established at the small boat harbors in the areas more particularly described in Exhibit 1 and shown on Exhibit 2, January 26, 1985, located at the end of this chapter]

(a) The department shall have the authority to establish parking meter zones within a state boating facility.

(b) The department may establish metered parking stalls for parking motor vehicles at state boating facilities." [Eff 2/24/94 am] (Auth: HRS §§200-

2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

41. Section 13-233-24, Hawaii Administrative Rules, is repealed.

["§13-233-24 Parking time limits and meter operating hours. Time limitations and meter operating hours for legal parking in the following listed zones are as follows:

<u>Parking meter zone</u>	<u>Parking time limit</u>	<u>Meter operating hour</u>
A	4 hours	24 hrs. per day 7 days per week
B	8 hours	24 hrs. per day 7 days per week
C	4 hours	24 hrs. per day 7 days per week
D	8 hours	24 hrs. per day 7 days per week
E	8 hours	24 hrs. per day 7 days per week"]

[Eff 2/24/94 R] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

42. Section 13-233-26, Hawaii Administrative Rules, is repealed.

["§13-233-26 Charges for parking. Charges will be made and collected for parking, stopping, or standing a vehicle in parking meter zones at the rate of forty cents per hour during meter operating hours."] [Eff 2/24/94 R] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

43. Section 13-233-27, Hawaii Administrative Rules, is amended to read as follows:

"§13-233-27 Charges for [enclosure] use or obstruction of a parking [meter] stall[, incidental to construction, etc.] (a) [Before any person, other than any governmental agency, shall enclose, obstruct, or cause to be enclosed or obstructed any parking stall or portion

thereof, incidental to erecting, constructing, enlarging, altering, repairing, moving, improving, removing, converting, or demolishing any building or structure, or for other reasons, that person shall obtain a permit from the department and pay to the department a sum calculated at the rate of \$2 for each such parking meter stall for each day or fraction thereof, during which the stall shall be so enclosed or obstructed.] A permit and payment of \$24 per stall per twenty-four hour period or any fraction of that time are required to obstruct, enclose or otherwise remove the parking stall from public use.

[(b) No permit to enclose or obstruct a parking stall shall be issued to any person to whom the foregoing provision is applicable until the person shall have made a deposit of the calculated sum, based on the estimated number of days during which the parking stall shall be so enclosed or obstructed. The person shall notify the department immediately upon termination of the enclosure or obstruction.]

(b) Government vehicles or personal vehicles of state employees, used in their official duties, are exempt from the provisions of subsection (a).” [Eff 2/24/94;
am] (Auth: HRS §§200-2, 200-3, 200-22, 200-24)
(Imp: HRS §§200-2, 200-3, 200-22, 200-24)

44. Section 13-233-28, Hawaii Administrative Rules, is repealed:

[“§13-233-28 Harbor tenants - parking permits. Notwithstanding any other provisions of this subchapter to the contrary, a person may park a motor vehicle in a parking stall in a parking meter zone, in excess of the time limit and without depositing coins in the parking meter located adjacent to the parking stall, if the person has been issued a parking permit and displays a valid parking sticker (decal) issued to that person by the department, on the left hand side of the rear bumper or as near thereto as the configuration of the motor vehicle permits, or has been issued a temporary parking permit and displays this temporary parking permit in or on the vehicle so as to be clearly visible from the outside.]” [Eff 2/24/94 R
] (Auth: HRS §§200-2,
200-4) (Imp: HRS §§200-2, 200-4)

45. Section 13-233-29, Hawaii Administrative Rules, is amended to read as follows:

“§13-233-29 [Eligibility for parking] Parking permits[: fee per vehicle] and fees. (a) Individuals required to have a parking permit, as provided in section 13-233-6, shall complete a parking permit application provided by the department.

(b) The department shall issue one parking pass or decal per valid mooring permit or commercial activity permit at the time a parking permit is issued. The parking pass or decal shall be displayed in one of the following manners:

- (1) Bumper sticker parking passes or decals shall be located on the left side of the rear bumper; and
- (2) Temporary and miscellaneous parking passes or decals shall be displayed on the driver's side of the dashboard where it is clearly visible.
- (c) Stolen, lost or mutilated parking passes or decals may be replaced for a fee of \$5 if the detailed reasons for replacement are provided to the department in writing or if the mutilated decal is presented at the time of replacement.
- (d) Parking passes or decals shall only be used by the person to whom the pass or decal is issued.
- (e) It shall be a violation of this section to possess or display a parking pass or decal that has been altered, forged or counterfeited.
- (f) Where the number of quarterly parking permits is restricted, they shall be issued, on a one-to-a-vessel basis, in the following order, as permits become available:
 - (1) To the owner, co-owner, or master of a registered or documented vessel possessing a valid mooring permit or commercial activity permit for the state boating facility where the applicant is requesting a parking permit;
 - (2) To the owner, co-owner, or master of a registered or documented vessel used principally in the waters surrounding the state boating facility. The applicant shall be required to present proof of vessel ownership or designation as the master of the vessel at the time the application is submitted;
 - (3) To, and including employees of, any person, business, or corporation authorized by the department to engage in a business or commercial activity at the state boating facility; and
 - (4) On a one-to-a-vessel basis, to the spouse or legal dependent of an owner, co-owner, or master of a registered or documented vessel who possesses a valid mooring permit for the state boating facility where the applicant is requesting a parking permit.
- (g) Where the number of quarterly permits is not restricted, they shall be issued on a first-come, first-served basis, with no more than one quarterly permit for the owner and one for a spouse or legal dependent.
- (h) A quarterly parking permit may be canceled by the permittee upon thirty days written notice to the department along with the return of the parking pass or decal. No credit or refund shall be given.
- (i) A person who has been issued a quarterly parking sticker or decal may turn in the sticker or decal and receive a sticker or decal for another automobile owned by the person for a fee of \$5.
- (j) A temporary parking permit may be required for periods of less than seventy-two hours in areas where parking congestion becomes a problem, e.g., Ala Wai state boating facility. Temporary parking permits may be issued to:
 - (1) A bona fide guest of an owner or co-owner of a recreational vessel possessing a valid mooring permit for the state boating facility in which the vessel is moored

or waters surrounding the state boating facility; or

(2) A participant, contestant, organizer, sponsor, staff, volunteer, etc., associated with a film permit, marine event permit, or special use permit.

(k) A miscellaneous permit, as provided in section 13-231-3, may be issued for special cases, e.g., a boating trip that extends over seventy-two hours, but does not exceed thirty days.

[(a)] (l) [Persons eligible for the parking permits described in section 13-233-28 and the fees] Fees for [the] parking permits are as follows:

<u>Eligible persons</u>	<u>Fees Per Vehicle</u>
(1) [An] <u>A vessel</u> owner or co-owner holding a valid use permit [(permittee)] authorizing the mooring of the owner's vessel at the [small boat harbor] <u>state boating facility</u> , and any co-owner of the vessel.	[\$5] <u>\$15</u> per quarter
(2) The <u>vessel</u> master, spouse of each owner and their legal dependents [18] <u>eighteen</u> year of age or older.	[\$15] <u>\$45</u> per quarter
(3) [An] <u>A vessel</u> owner or co-owner holding a valid use permit authorizing the mooring of the owner's vessel at the [small boat harbor] <u>state boating facility</u> may secure a temporary parking permit [which in no event] <u>that shall not exceed</u> [72] <u>seventy-two</u> hours, for use by bona fide guests accompanying the owner on board the vessel on a voyage outside the confines of the [small boat harbor] <u>state boating facility</u> .	[\$2] <u>\$10</u> for each [24] <u>twenty-four</u> [-] hour period or fraction [at thereof] <u>of that time</u>
(4) <u>Individuals issued a miscellaneous permit.</u>	<u>\$10 per twenty-four hour period or fraction of that time</u>
[(4)] (5) [An owner or employee of a firm,] <u>To, and including employees of any person, business, or corporation authorized by the department to</u> [organization operating under a lease or other agreement authorizing the owner, employee, firm, business, or organization to] engage in a [business or] commercial activity at the [small boat harbor] <u>state boating facility</u> .	\$30 per [quarter] <u>month</u>

(6)	<u>Anyone associated with a film, marine event, or special use permit. Participants in a not-for profit event shall be exempt from paying a fee.</u>	<u>\$24 for each twenty-four hour period or any fraction of that time</u>
(7)	<u>Principal habitation permittee. No more than two parking permits per permittee.</u>	<u>Free of charge.</u>

(m) Failure to pay parking fees, submitting fraudulent information on permit applications, misusing parking passes or failing to abide by the provisions of this section shall be cause for the revocation of the parking permit by the department after reasons for the revocation have been mailed or delivered to the last address on record. A fine may be levied as provided in section 13-230-4.

[(b)] (n) Fees for permits issued after the first month of a calendar quarter shall be prorated on a monthly basis.

[(c) Except as provided in subsection (a)(2), not more than one parking permit shall be issued to a person eligible for a parking permit.]” [Eff 2/24/94

am] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

46. Section 13-233-30, Hawaii Administrative Rules, is repealed:

["13-233-30 Replacement of mutilated stickers. The eligible holder of a parking sticker that becomes mutilated or illegible shall apply for and be issued a replacement sticker if the mutilated or illegible sticker is surrendered to the department. A fee of \$1 shall be paid prior to the issuance of a replacement sticker."] [Eff 2/24/94
R] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

47. Section 13-233-31, Hawaii Administrative Rules, is repealed:

["§13-233-31 Transfer of permits. The holder of a parking sticker may upon surrender of a parking sticker apply for and be issued another parking sticker to be applied to another vehicle owned by the holder. A fee of \$1 payable in advance shall be paid prior to the issuance of a new sticker."] [Eff 2/24/94 R]
(Auth: HRS §§200-2, 200-4, 200-22, 200-24)(Imp: HRS §§200-2, 200-4, 200-22, 200-24)

48. Section 13-233-32, Hawaii Administrative rules, is repealed:

["§13-233-32 Cancellation of permits. The holder of a valid parking permit who disposes of the vehicle for which the permit was issued or who otherwise desires to cancel a parking permit may obtain a credit or refund as appropriate for any remaining unexpired month or months, upon surrender of the parking sticker to the department. No credit or refund shall be given for portions of a month."] [Eff 2/24/94 R] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

49. Section 13-233-34, Hawaii Administrative rules, is repealed:

["§13-233-34 Violations and penalties. (a) It shall be a violation of this part for any person:

- (1) To cause, allow, permit, or suffer any vehicle within that person's control to be parked, stopped, or standing in any parking stall for a consecutive period of time in excess of the parking time limit specified in section 13-233-24 for the parking meter zone in which the meter is located, irrespective of the number or amounts of the coins deposited in the meter, unless the vehicle occupying the parking stall displays a valid parking sticker or temporary parking permit issued

- by the department.
- (2) To permit a vehicle within the person's control to be parked, stopped, or standing in any parking stall during meter operating hours in the parking meter zone in which the meter is located while the parking meter for the stall indicates by signal that the lawful parking time in the stall has expired, unless the vehicle occupying the parking stall displays a valid parking sticker or temporary parking permit issued by the department. This provision shall also not apply during the act of parking or during the necessary time which is required to deposit immediately thereafter a coin or coins in the meter.
 - (3) To fail to deposit the proper coins and to set the timing mechanism in operation as required under sections 13-233-25 and 13-233-26, unless the vehicle occupying the parking stall displays a valid parking sticker or temporary parking permit issued by the department.
 - (4) To park, stop, or stand any vehicle across any line or marking of a parking meter stall or in such position that the vehicle shall not be entirely within the stall designated by the lines or markings, except that a vehicle which is of a size too large to be parked within a single designated parking meter stall shall be permitted to occupy two adjoining parking meter stalls when coins shall have been deposited in the parking meter stalls so occupied as is required in this subchapter for the parking of other vehicles in the stall.
 - (5) To park, stop, or stand a towing vehicle with a boat trailer attached in any parking meter stall.
 - (6) To permit another person not entitled thereto, to use or have possession of a parking sticker.
 - (7) To alter, forge, counterfeit, or imitate a parking sticker.
 - (8) To possess or use a parking sticker, knowing it to have been altered, forged, counterfeited, or imitated.
 - (9) To avoid or attempt to avoid compliance with this section by affixing to a vehicle, a parking sticker not authorized by the department.
 - (10) To enclose, obstruct, or cause to be enclosed or obstructed any parking meter stall or portion thereof unless a permit has been obtained from the department as required in section 13-233-27.
 - (11) To deface, injure, tamper with, open or willfully break, destroy, or impair the usefulness of any parking meter installed under the provisions of this part.
 - (12) To deposit or cause to be deposited in any parking meter any slugs, device or metal substance, or other substitute for lawful United States coins.
 - (13) To disregard any official direction, instruction, or restriction indicated by or on official signs posted in a parking meter zone.
 - (b) A person who has violated this section may be fined as provided in section 13-230-4.”] [Eff 2/24/94 R] (Auth: HRS §§200-2, 200-4,

200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

50. Section 13-233-40, Hawaii Administrative Rules, is repealed:

["§13-233-40 Establishment of vessel owner parking zone. Vessel owner parking zone 1 is established at the Ala Wai boat harbor in the area described in Exhibit 3 and shown on Exhibit 2, dated January 26, 1985, located at the end of this chapter."] [Eff 2/24/94 R
] (Auth: HRS §§200-2, 200-4)
(Imp: HRS §§200-2, 200-4)

51. Section 13-233-42, Hawaii Administrative Rules, is repealed:

["§13-233-42 Vessel owner parking permits. The vessel owner parking zone 1 is designated for vehicles displaying a valid parking sticker (decal), issued by the department, on the left-hand side of the rear bumper or as near thereto as the configuration of the motor vehicle permits or displaying a valid temporary parking permit in or on the vehicle so as to be clearly visible from the outside."] [Eff 2/24/94 R
] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

52. Section 13-233-43, Hawaii Administrative Rules, is repealed:

["§13-233-43 Eligibility for parking permits within the vessel owner parking zone; fee per vehicle. (a) The persons eligible for parking permits pursuant to section 13-233-29 and the fees for the permits are:

- (1) Permittees holding valid use permits to moor their vessels at a small boat harbor, their spouses, vessel master, and their legal dependents eighteen years of age or older. The fee per vehicle per calendar quarter shall be:
 - (A) \$5 for each owner or co-owner; and
 - (B) \$15 for other eligible persons; and
- (2) The fee for permits issued after the first month of a calendar quarter shall be prorated on a monthly basis.

Not more than one parking permit shall be issued to a person eligible for a parking permit."] [Eff 2/24/94 R
] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

53. Section 13-234-1, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-1 General statement. (a) The user fees and charges relative to the use of state [property and] boating facilities, [at a small boat harbor] ocean waters and navigable streams and beaches of the State, are[:

- (1) Calculated to produce an amount at least sufficient to pay the expenses of operating, maintaining, and managing the facilities and services and the cost including interest, of amortizing capital improvements for boating facilities appropriated after July 1, 1975, including, but not limited to, berths, slips, and related accommodations, exclusive of the costs of constructing, operating, and maintaining general navigation channels, protective structures, and aids to navigation; and
- (2) Fixed with due regard to the primary purposes of providing public recreational facilities and promoting the fishing industry. See] for the administration and regulation of the ocean recreation, and boating programs, as defined by sections 200-2, [and] 200-3, 200-4, 200-08, 200-10, 200-12, 200-21, 200-22, Hawaii Revised Statutes.

(b) Nothing contained in this subchapter shall be construed to limit the authority and power of the department to waive any fees, or to assess any reasonable fees and charges in addition to those specifically provided in this subchapter for trivial or infrequent uses of state property, facilities, or services; if fees for the uses are not contained [herein] in this subchapter; or as the circumstances may warrant.

(c) The acceptance of payment, or billings [therefor], shall not waive the nature of trespass or ratify or permit illegal mooring, docking, storage or parking."

[Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-21, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-21, 200-22, 200-24)

54. Section 13-234-2, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-2 Payment, delinquency and liens. (a) [Security deposit and method of payment:

- (1) Security deposit. A permittee, upon being issued a use permit, shall in addition to paying fees and charges as they become due, deposit with the State in legal tender or in such other form as may be acceptable to the State, an amount equal to two months' fees and charges at the rate prescribed in the rules in effect on the date of issuance of the permit as security for the faithful performance on the permittee's part of all the terms and conditions, specified therein.] The mooring permittee shall pay a security deposit, that may be a certificate of deposit that names the State as a co-owner, in an amount equal to two times the mooring fees at the rate described in the rules at the time a permit is issued. Conditions of the deposit are as follows:

- (1) On the effective date of any increase in mooring fees [and charges], the permittee shall deposit [such] the additional amount to cover the increase. The State shall refund any excess deposit if the mooring fees [and charges] are

reduced.

(2) After successful inspection by the department [The] the deposit [will] shall be returned, without interest, to the permittee upon the termination of the permit only if the permittee has met the terms and conditions of the permit [have been faithfully performed] to the satisfaction of the department.

(3) In the event the permittee [does not so perform] fails to abide by the conditions of the permit, the department may declare the deposit forfeited or apply it as an offset to any amounts owed by the permittee to the State under the use permit, or to any damages or [loss] losses caused to the State by the permittee. The exercise of the permittee's option is without prejudice to the right of the State to institute action for debt or damages against the permittee or to take any other or further action against the permittee as may be provided by law or these rules for the enforcement of the rights of the State under the use permit.

[(2)] Advance payment required. As a prerequisite to the issuance of a use permit the permittee shall make a security deposit pursuant to section 13-234-2, pay the permit processing fee, one month's fees and charges, and any other fees and charges that may be due and payable to the State; provided that if the effective date of the use permit is other than the first day of the month, charges shall be properly prorated for the balance of the month and these prorated charges shall be paid.]

[(3)] (b) [Method of payment of fees and charges.] The following fees and charges shall be paid in advance without notice or demand on the first day of each and every month during the life of the use permit, except that the amounts due for the first month shall be paid [prior to the] upon issuance of the permit as described in this section [13-234-2]:

- (A) Mooring;
- (B) Residence;
- (C) Electricity;
- (D) Shower;
- (E) Dry storage;
- (F) Gear locker;
- (G) Facilities constructed by others; and
- (H) Rent and other fixed recurring fees and charges.

[(b)] (c) Permit processing fees are due and payable in advance.

[(c)] (d) All other fees and charges are due and payable on the first day of the month after they are incurred.

[(d)] (e) [Fees] User fees and charges for the last month shall be [properly] prorated at the daily rate, calculated on a three-hundred and sixty-five day year. If the termination is at the owner's option, unless a written notice of intent to vacate has been received by the department from the boat owner at least thirty days in advance of the termination date, as prescribed in section 13-231-9, the owner shall be liable for the full amount of the monthly fees and charges.

[(e)] (f) All fees and charges shall become delinquent [thirty days] at the end of the month after they become due and payable. [All] Any delinquent accounts [will] may be referred to the Credit Bureau Services if they remain unpaid on the day the account becomes delinquent.

[(f)] (g) Without prejudice to any other remedy available to the State, interest and, regardless of the amount of the delinquency, a [\$25.00] \$25 per month service charge shall be assessed [on all delinquencies] for each delinquent fee or charge owed the department. The interest shall be computed at a rate of one per cent per month, annual percentage rate of twelve per cent, on the delinquent amount. The interest and service charges shall continue to be assessed until the delinquency is paid in full.

[(g)] (h) In the event the fees [and charges which] that [shall] have accrued in favor of the department [shall not be] have not been paid as provided in these rules, the department may, after [reasonable notice] giving thirty days written notice as provided in section 13-230-6, take possession of the vessel, its tackle, apparel, fixtures, equipment, and furnishings, and may retain [such] possession of the items until all charges [then owing] owed to the department, including [and] any charges [which] that [shall thereafter] have [accrue] accrued are [fully] paid in full. The remedy [thus] provided in this section is in addition to and not in lieu of any other remedies [which] that the department may have by virtue of statute or otherwise.

(i) Charges associated with negotiable instruments shall be in accordance with standard business practices, including surcharge for the use of credit cards, if acceptable." [Eff 2/24/94; am] (Auth HRS §§200-2, 200-3, 200-10, 200-22, 200-24) (Imp HRS §§200-2, 200-3, 200-10, 200-22, 200-24)

55. Section 13-234-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-3 Mooring rates. (a) The [following] mooring rate schedule noted in paragraph 1 shall become effective on the first day of the [calendar] first full month [following] occurring after the effective date of the amendments [of] to this chapter and shall be increased each twelve months thereafter for the next two years as noted in paragraphs 2 and 3. The mooring rate schedule in this subsection is per foot of vessel length overall per month effective upon the applicant's acceptance of the offer of an available berth.

<u>[TYPE OF MOORING</u>		<u>HARBORS</u>		
		<u>KEEHI</u>		
		<u>LAHAINA</u>		
		<u>MAALAEA &</u>		
		<u>ALA WAI</u>	<u>HONOKOHAU</u>	<u>ALL OTHERS</u>
(1) Alongside catwalk:	\$3.40		\$2.95	\$2.50
(2) Bow/stern mooring:				

	On state buoy, anchor or cable:	\$2.70	\$2.30	\$2
	Minimum fee:	\$35.00	\$35.00	\$25.00
	On owner's buoy or anchor:	\$1.75	\$1.50	\$1.30
	Minimum fee:	\$28.00	\$28.00	\$20.00
(3)	In harbor basin:			
	On state cable, buoy, or anchor:			\$1.20
	Minimum Fee:			\$20.00
	On owner's buoy or anchor:			\$.80
	Minimum Fee:			\$13.00
(4)	Skiff moorings (Fore and aft, all types):	\$1.15	\$1.10	\$1.00
	Minimum Fee:	\$17.50	\$16.00	\$12.50
(5)	Work docks (Per foot of vessel length per day):	\$.35	\$.30	\$.25
	Minimum Fee:	\$9.00	\$7.00	\$5.00

The following mooring rate schedule shall be implemented on the first day of the calendar month twelve months following the effective date of the rates listed above.

		<u>TYPE OF MOORING</u>		
		<u>HARBORS</u>	<u>KEEHI</u>	
			<u>LAHAINA</u>	
			<u>MAALAEA &</u>	
		<u>ALA WAI</u>	<u>HONOKOHAU</u>	<u>ALL OTHERS</u>
(1)	Alongside catwalk:	\$4.10	\$3.50	\$2.80
(2)	Bow/stern mooring:			
	On state buoy, anchor or cable:	\$3.40	\$2.85	\$2.50
	Minimum fee:	\$43.50	\$43.50	\$31.00

	On owner's buoy or anchor:	\$2.20	\$1.85	\$1.60
	Minimum fee:	\$34.75	\$34.75	\$24.80
(3)	In harbor basin: On state cable, buoy, or anchor:			\$1.50
	Minimum Fee:			\$24.80
	On owner's buoy or anchor:			\$1.00
	Minimum Fee:			\$16.10
(4)	Skiff moorings (Fore and aft, all types):	\$1.45	\$1.35	\$1.25
	Minimum Fee:	\$21.70	\$19.85	\$15.50
(5)	Work docks (Per foot of vessel length per day):	\$.45	\$.40	\$.30
	Minimum Fee:	\$11.15	\$8.70	\$6.00]

TYPE OF MOORING AND STATE BOATING FACILITIES

(1) <u>Mooring rates that become effective on the first day of the first full month occurring after the effective date of the amendments:</u>				
	<u>Ala Wai</u>	<u>Lahaina</u>	<u>Keehi, Maalaea, Nawiliwili & Honokahou</u>	<u>All Others</u>
<u>Along catwalk:</u>	<u>\$11.70</u>	<u>\$7.00</u>	<u>\$4.75</u>	<u>\$3.80</u>
<u>Bow-stern mooring:</u> <u>On state buoy, anchor or</u> <u>cable:</u>	<u>\$9.70</u>	<u>\$5.70</u>	<u>\$3.85</u>	<u>\$3.40</u>
<u>(Minimum fee):</u>	<u>\$116.40</u>	<u>\$68.40</u>	<u>\$46.20</u>	<u>\$40.80</u>
<u>On owner's buoy or anchor:</u>	<u>\$6.25</u>	<u>\$3.70</u>	<u>\$2.50</u>	<u>\$2.15</u>
<u>(Minimum fee):</u>	<u>\$75</u>	<u>\$44.40</u>	<u>\$30.20</u>	<u>\$25.80</u>

<u>In harbor basin:</u> <u>On state cable, buoy or anchor:</u>				<u>\$2.05</u>
<u>(Minimum fee):</u>				<u>\$24.60</u>
<u>On owner's buoy or anchor:</u>				<u>\$1.35</u>
<u>(Minimum fee):</u>				<u>\$16.20</u>
<u>Skiff and dinghy moorings (fore and aft, all types:)</u>	<u>\$4.15</u>	<u>\$2.70</u>	<u>\$1.80</u>	<u>\$1.70</u>
<u>(Minimum fee):</u>	<u>\$49.80</u>	<u>\$32.40</u>	<u>\$21.60</u>	<u>\$20.40</u>
<u>Work docks (per foot/vessel length/day)</u>	<u>\$1.30</u>	<u>80 cents</u>	<u>55 cents</u>	<u>40 cents</u>
<u>(Minimum fee):</u>	<u>\$15.60</u>	<u>\$9.60</u>	<u>\$6.60</u>	<u>\$4.80</u>

(2) <u>Mooring rates that become effective on the first day of the calendar month twelve months following the mooring rates noted in paragraph (1):</u>				
	<u>Ala Wai</u>	<u>Lahaina</u>	<u>Keehi, Maalaea, Nawiliwili & Honokahou</u>	<u>All Others</u>
<u>Along catwalk:</u>	<u>\$12.90</u>	<u>\$7.70</u>	<u>\$5.25</u>	<u>\$4.20</u>
<u>Bow-stern mooring:</u> <u>On state buoy, anchor or cable:</u>	<u>\$10</u>	<u>\$6.30</u>	<u>\$4.25</u>	<u>\$3.75</u>
<u>(Minimum fee):</u>	<u>\$120</u>	<u>\$75.60</u>	<u>\$51</u>	<u>\$45</u>
<u>On owner's buoy or anchor:</u>	<u>\$6.90</u>	<u>\$4.10</u>	<u>\$2.75</u>	<u>\$2.40</u>
<u>(Minimum fee):</u>	<u>\$82.80</u>	<u>\$49.20</u>	<u>\$33</u>	<u>\$28.80</u>
<u>In harbor basin:</u> <u>On state cable, buoy or anchor:</u>				<u>\$2.25</u>
<u>(Minimum fee):</u>				<u>\$27</u>
<u>On owner's buoy or anchor:</u>				<u>\$1.50</u>

<u>(Minimum fee):</u>				<u>\$18</u>
<u>Skiff and dinghy moorings (fore and aft, all types:)</u>	<u>\$4.55</u>	<u>\$3</u>	<u>\$2</u>	<u>\$1.90</u>
<u>(Minimum fee):</u>	<u>\$54.60</u>	<u>\$36</u>	<u>\$24</u>	<u>\$22.80</u>
<u>Work docks (per foot/vessel length/day)</u>	<u>\$1.45</u>	<u>90 cents</u>	<u>60 cents</u>	<u>45 cents</u>
<u>(Minimum fee):</u>	<u>\$17.40</u>	<u>\$10.80</u>	<u>\$7.20</u>	<u>\$5.40</u>

(3) <u>Mooring rates that become effective on the first day of the calendar month twelve months following the mooring rates noted in paragraph (2):</u>				
	<u>Ala Wai</u>	<u>Lahaina</u>	<u>Keehi, Maalaea, Nawiliwili & Honokahou</u>	<u>All Others</u>
<u>Along catwalk:</u>	<u>\$13.55</u>	<u>\$8.10</u>	<u>\$5.50</u>	<u>\$4.40</u>
<u>Bow-stern mooring: On state buoy, anchor or cable:</u>	<u>\$11.55</u>	<u>\$6.65</u>	<u>\$4.50</u>	<u>\$3.95</u>
<u>(Minimum fee):</u>	<u>\$138.60</u>	<u>\$79.80</u>	<u>\$54</u>	<u>\$47.40</u>
<u>On owner's buoy or anchor:</u>	<u>\$7.25</u>	<u>\$4.30</u>	<u>\$2.90</u>	<u>\$2.50</u>
<u>(Minimum fee):</u>	<u>\$87</u>	<u>\$51.60</u>	<u>\$34.80</u>	<u>\$30.60</u>
<u>In harbor basin: On state cable, buoy or anchor:</u>				<u>\$2.35</u>
<u>(Minimum fee):</u>				<u>\$28.20</u>
<u>On owner's buoy or anchor:</u>				<u>\$1.60</u>
<u>(Minimum fee):</u>				<u>\$19.20</u>
<u>Skiff and dinghy moorings (fore and aft, all types:)</u>	<u>\$4.80</u>	<u>\$3.15</u>	<u>\$2.10</u>	<u>\$2</u>
<u>(Minimum fee):</u>	<u>\$57.60</u>	<u>\$37.80</u>	<u>\$25.20</u>	<u>\$24</u>

<u>Work docks (per foot/vessel length/day)</u>	<u>\$1.50</u>	<u>95 cents</u>	<u>65 cents</u>	<u>50 cents</u>
<u>(Minimum fee):</u>	<u>\$18</u>	<u>\$11.40</u>	<u>\$7.80</u>	<u>\$6</u>

(b) Mooring rates shall be increased by the department at a rate of three per cent per year beginning twelve months after the mooring rates, as provided in subsection (a)(3), take effect and each subsequent year thereafter for a period not to exceed five years. The department may re-evaluate the percentage increase as described in this subsection every five years.

[(b)] (c) The mooring rate schedule in subsection (a) shall apply to single-hulled vessels, except as otherwise [prescribed] provided in this section, or in sections 13-234-5, 13-234-7 and 13-234-25.

[(c)] (d) A multi-hulled vessel shall be charged mooring fees in proportion to berths used in increments of one, one and one-half, or two times the fee prescribed in subsection (a) for a single-hulled vessel of equal length.

[(d)] (e) When more than one vessel occupies a single berth end to end, the charge shall be computed at the rate prescribed in subsection (a).

[(e)] (f) Except for [subsection (a)(5)] fees for work docks, which sets out the minimum charges per day, the amounts set out in the mooring rate schedules in subsection (a) are the minimum charges per month.

[(f)] If the assigned berth/mooring under subsection (a)(1) and (a)(2) is not provided with electricity, the fee prescribed shall be decreased by \$.05 per foot per month.]

(g) Living aboard permittees sixty-five years of age or older on December 1, 2000 and who have been residents of the State for at least three of the last five years upon the effective date of these rules shall not be subject to the fees increases as provided in subsection (a), except that the department may increase the mooring fee three per cent beginning twelve months after the effective date of the amendments to these rules and each subsequent year thereafter for a period not to exceed five years. The department may re-evaluate the percentage increase as described in this subsection every five years. This senior discount shall expire upon the death of the living aboard permittee or if the permit is not renewed, except that the living aboard permit may be transferred to the deceased permittee's spouse as described in subsection (h). If the vessel registration is transferred to anyone else other than the living aboard permittee's spouse, or if the living aboard permittee chooses to place a different vessel in the slip, the fees as provided in subsection (a) shall apply.

(h) Any spouse who assumes ownership of a vessel from the living aboard permittee upon the death of the living aboard permittee, and who obtains a living aboard permit, shall not be subject to the fees described in subsection (a) provided that the new living aboard permittee was sixty-five years or older on December 1, 2000 and had been a resident of the State for at least three of the last five years prior to the time of the spouse's death. The fees shall revert to the fees provided in subsection (a) upon the death of the new living aboard permittee, or if the new living aboard permittee chooses to place a different vessel in the slip.” [Eff

2/24/94; am

](Auth: HRS

§§200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-6, 200-10, 200-12, 200-22, 200-24)

56. Section 13-234-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-4 Mooring rates for offshore mooring and anchoring. (a) The [following] mooring rate schedule noted in paragraph (1) shall become effective on the first day of the [calendar] first full month [following] occurring after the effective date of the amendments [of] to this [section] chapter and shall be increased each twelve months thereafter for the next two years as noted in paragraphs (2) and (3). The mooring rate schedule is per foot of vessel length overall per month:

[(1) On state buoy, anchor or cable: vessel length	rate
0-30'	\$1.05
31-40'	\$1.15
41-50'	\$1.25
51-60'	\$1.35
61-70'	\$1.45
71-80'	\$1.55
81-90'	\$1.65
over 90'	\$1.75
Minimum monthly fee:	\$25.00

(2) On owner's own buoy or at anchor:

vessel length	rate
0-30'	\$0.70
31-40'	\$0.80
41-50'	\$0.90
51-60'	\$1.00
61-70'	\$1.10
71-80'	\$1.20
81-90'	\$1.30
over 90'	\$1.40
Minimum monthly fee:	\$16.50]

(1) <u>Offshore mooring and anchoring rates that become effective on the first day of the first full month occurring after the effective date of the amendments to this chapter:</u>		
<u>Vessel Length Overall</u>	<u>On State Buoy, Anchor or Cable</u>	<u>On Owner's Own Buoy, or at Anchor</u>
<u>0'-30'</u>	<u>\$1.40</u>	<u>95 cents</u>
<u>31'-40'</u>	<u>\$1.55</u>	<u>\$1.10</u>
<u>41'-50'</u>	<u>\$1.70</u>	<u>\$1.20</u>
<u>51'-60'</u>	<u>\$1.80</u>	<u>\$1.35</u>
<u>61'-70'</u>	<u>\$1.95</u>	<u>\$1.50</u>
<u>71'-80'</u>	<u>\$2.10</u>	<u>\$1.60</u>
<u>81'-90'</u>	<u>\$2.25</u>	<u>\$1.75</u>
<u>Over 90'</u>	<u>\$2.35</u>	<u>\$1.90</u>
<u>Minimum Monthly Fee</u>	<u>\$34</u>	<u>\$22</u>

(2) <u>Offshore mooring and anchoring rates that become effective on the first day of the calendar month twelve months following the mooring rates noted in paragraph (1):</u>		
<u>Vessel Length Overall</u>	<u>On State Buoy, Anchor or Cable</u>	<u>On Owner's Own Buoy, or at Anchor</u>
<u>0'-30'</u>	<u>\$1.55</u>	<u>\$1.05</u>
<u>31'-40'</u>	<u>\$1.70</u>	<u>\$1.20</u>
<u>41'-50'</u>	<u>\$1.90</u>	<u>\$1.30</u>
<u>51'-60'</u>	<u>\$2</u>	<u>\$1.50</u>
<u>61'-70'</u>	<u>\$2.15</u>	<u>\$1.65</u>
<u>71'-80'</u>	<u>\$2.30</u>	<u>\$1.80</u>
<u>81'-90'</u>	<u>\$2.50</u>	<u>\$1.95</u>
<u>Over 90'</u>	<u>\$2.60</u>	<u>\$2.10</u>
<u>Minimum Monthly Fee</u>	<u>\$38</u>	<u>\$25</u>

(3) <u>Offshore mooring and anchoring rates that become effective on the first day of the calendar month twelve months following the mooring rates noted in paragraph (2):</u>		
<u>Vessel Length Overall</u>	<u>On State Buoy, Anchor or Cable</u>	<u>On Owner's Own Buoy, or at Anchor</u>
<u>0'-30'</u>	<u>\$1.65</u>	<u>\$1.10</u>
<u>31'-40'</u>	<u>\$1.80</u>	<u>\$1.25</u>
<u>41'-50'</u>	<u>\$2</u>	<u>\$1.40</u>
<u>51'-60'</u>	<u>\$2.10</u>	<u>\$1.60</u>
<u>61'-70'</u>	<u>\$2.25</u>	<u>\$1.75</u>
<u>71'-80'</u>	<u>\$2.40</u>	<u>\$1.90</u>
<u>81'-90'</u>	<u>\$2.60</u>	<u>\$2.05</u>
<u>Over 90'</u>	<u>\$2.75</u>	<u>\$2.20</u>
<u>Minimum Monthly Fee</u>	<u>\$40</u>	<u>\$26</u>

(b) The fee for barges, platforms, and [other] commercial vessels [over fifty feet in length] having no operating means of propulsion shall be two times the rate listed in subsection (a).

(c) The fee for vessels anchored or moored without a permit issued by the department shall be at the rate [specified] as provided in section 13-234-5.

(d) Persons issued a mooring permit under this section shall be entitled to the use of any designated dinghy mooring area at no charge.

(e) Mooring rates shall be increased by the department at a rate of three per cent per year beginning twelve months after the mooring rates, as provided in subsection (a)(3), take effect and each subsequent year thereafter for a period not to exceed five years. The department may re-evaluate the percentage increase as described in this subsection every five years." [Eff 2/24/94; am]

(Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-24)(Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-24)

57. Section 13-234-5, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-5 Mooring fees for vessels assigned temporary moorings or occupying moorings without permission. (a) [Visitors and others] Persons assigned a [berth] mooring for a temporary period of more than thirty days shall make the security deposit and pay mooring fees

as prescribed in this chapter.

(b) Those assigned a [berth] mooring for a period of thirty days or less shall not be required to make the security deposit [referred to] as provided in section 13-234-2, [as they] but shall be required to pay fees in advance.

(c) The fees [prescribed] described in subsection (d) shall apply for the entire period the vessel is in the [small boat harbor] state boating facility.

(d) The mooring fees for a vessel assigned a [berth] mooring for thirty days or less shall be as provided in sections 13-234-3 or 13-234-4, plus ten per cent, for each twenty-four hours or any fraction of that time period. [:

		Rate per 24 hours or fraction thereof	
		<u>At Berth</u>	<u>At Anchor or moored</u>
(1)	Less than 20 feet	\$3.45	\$2.25
(2)	20 feet or more but less than 30 feet	\$4.60	\$3.00
(3)	30 feet or more but less than 40 feet	\$5.75	\$3.75
(4)	40 feet or more but less than 50 feet	\$6.90	\$4.50
(5)	50 feet but less than 60 feet	\$7.95	\$5.75
(6)	60 feet but less than 70 feet	\$9.20	\$7.50
(7)	70 feet but less than 80 feet	\$10.35	\$8.50
(8)	80 feet but less than 90 feet	\$11.50	\$9.25
(9)	90 feet but less than 100 feet	\$12.65	\$11.50
(10)	100 feet or more	\$13.80	\$13.00]

(e) The mooring fees for a vessel moored in a [small boat harbor] state boating facility without permission of the department or in violation of section 13-231-17 shall be:

<u>Length of stay</u>	<u>Fee</u>
(1) 30 days or less	[-to] 1-1/2 times the fees stated in subsection (d) [above];
(2) 31-60 days	[-] 2 times the fees stated in subsection (d) [above] for the days period over 30 days;

(3) More than 60 days	[-]3 times the fees stated in subsection (d) for the period over 60 days.
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(h) The fees for a vessel moored in a state boating facility work dock area in violation of this section or section 13-231-17 shall be:

<u>Length of stay</u>	<u>Fee</u>
(1) 30 days or less	1-1/2 times the fees stated in subsection (d);
(2) 31-60 days	2 times the fees stated in subsection (d) for the period over 30 days;
(3) More than 60 days	3 times the fees stated in subsection (d) for the period over 60 days.

[(f)] (i) In addition to any civil remedy or criminal action available to the department, vessels moored without permission shall be liable for the payment of fees chargeable to [such] the moorage. The acceptance of the payment shall not waive the nature of trespass or ratify or permit the unlawful or illegal mooring." [Eff 2/24/94;
am] (Auth: HRS §§200-6, 200-10, 200-12, 200-22, 200-24)
(Imp: HRS §§200-6, 200-10, 200-12, 200-22, 200-24)

58. Section 13-234-6, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-6 Fees for vessel absent for more than fourteen days. Any [holder of a use permit who has applied as prescribed in section 13-231-11 to retain the permit to use the assigned berthing space and any other related use permits upon the permittee's return, and whose application has been approved] regular mooring permittee who has been granted a leave of absence by the department, as described in section 13-231-11, shall continue[,] to pay mooring fees as described in section 13-234-3 and any other permit or facility or user fees that accrue to the account during [any] the leave of absence. [of thirty days or less from the assigned berth, to pay fees for the berthing space and any other use permits designated in the application at the rate established in section 13-234-3 and other applicable sections of these rules. Where the absence permitted under section 13-231-11 exceeds thirty days, then for the period in excess of thirty days the mooring fees for the berth retained, and the fees prescribed in these rules for any facilities or services actually utilized by the permittee during the permittee's absence, shall be due and payable to the department.] During [such] the approved leave of absence, the department may issue a temporary [use] mooring permit for the use of the berthing space by another vessel and charge mooring fees, and any other fees that accrue [from] to the temporary permittee at the rate prescribed in these rules [and credit a portion of such fees collected to the account of the permanent permittee amounting to fifty per cent of the

regular mooring fee, prorated on a daily basis, for the period that temporary mooring fees are collected for the use of the berth]." [Eff 2/24/94; am]
(Auth: HRS
§§200-10, 200-22, 200-24) (Imp: HRS §§200-10, 200-12, 200-22, 200-24)

59. Section 13-234-7, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-7 Mooring fee for vessels owned by [nonresident] non-residents. The mooring fee for vessels owned by [nonresidents] non-residents, assigned a [permanent] berth in any state [small boat harbor] boating facility, shall be [ten] twenty per cent higher than the mooring rate schedule in section 13-234-3 (a), [and] (b)[(1)] and (c)." [Eff 2/24/94; am] (Auth: HRS §§200-10, 200-12, 200-22, 200-24) (Imp: HRS §§200-10, 200-12, 200-22, 200-24)

60. Section 13-234-8, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-8 Stay-aboard or principal habitation fee. (a) The owner of a vessel moored in a state [small boat harbor] boating facility and authorized to be used as a place of principal habitation, shall pay, in addition to mooring and any other applicable [fee] user fees or [charge] charges, a principal habitation fee computed according to vessel length (not vessel length overall) which is:

- (1) \$5.25 per foot of vessel length per month if the owner is a state resident; and
- (2) \$7.80 per foot of vessel length per month if the owner is a non-resident; provided that for any calendar year beginning after January 1, 1987 upon thirty days prior written notice from the department, the principal habitation fees established by this subsection shall be increased based on this increase in the annual cost of living index (U.S. Department of Labor, U.S. City Average Urban Consumer Price Index for "all items"), but the increase for any calendar year shall not exceed five per cent.

(b) The owner or operator of a transient vessel, or visiting vessel, shall pay a stay-aboard fee of [\$2.00] \$5.00 per [person] guest or crew member staying aboard a vessel, in addition to mooring or any other fees and charges, for each and every night that any person remains on board the vessel while the vessel is moored in a state [small boat harbor] state boating facility." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

61. Section 13-234-9, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-9 Stay-aboard or principal habitation fee for offshore mooring or anchoring. The owner of a vessel or houseboat moored or anchored outside a [small boat harbor] state boating facility and authorized to be used as a principal place of habitation or for staying aboard shall pay, in addition to any other applicable [fee] user fees or [charge] charges, a principal habitation fee, or a stay-aboard fee as appropriate, which shall be [one-half] the rate specified in section [13-234-7] 13-234-8." [Eff 2/24/94; am](Auth: HRS §§200-2, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-6, 200-10, 200-22, 200-24)

62. Section 13-234-10, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-10 Electricity user fee. The minimum monthly user fee for [the use of electricity] non-metered electrical service provided at the berth when furnished by the State at a [small boat harbor] state boating facility shall be as follows:

- [(1) When no person lives aboard....\$5.75
- (2) When no person lives aboard but electricity is used for refrigeration...\$11.00
- (3) When persons live aboard but electricity is not used for cooking or refrigeration. \$11.00
- (4) When persons live aboard and use electricity for cooking or refrigeration \$25.00]

<u>Vessel</u>	<u>Fees</u>
(1) <u>Vessels without refrigeration up to 40 feet vessel length overall</u>	<u>\$40</u>
(2) <u>Vessels with refrigeration up to 40 feet length overall and vessels without refrigeration greater than 40-feet vessel length overall.</u>	<u>\$50</u>
(3) <u>Vessels with refrigeration greater than 40-feet vessel length overall.</u>	<u>\$60"</u>

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

63. Section 13-234-11, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-11 Shower user fee. Showers with hot water, when provided, are intended primarily for the use of persons having vessels moored in the [small boat harbor] state boating facility. If sufficient shower facilities are available, the department may [permit, if reasonable under the circumstances,] allow persons who are authorized to conduct business [on small boat harbor premises] at state boating facilities pursuant to section 13-231-51 [to utilize such] the use of the shower facilities. A monthly user fee of [\$6.00] \$10 shall be assessed for each [such persons] person using the showers, except those under the age of four and those paying [residence service] principal habitation or stay aboard fees. No persons shall [utilize] use the [aforementioned] shower facilities unless that person has [secured a use] been issued a permit from the department authorizing use of the facilities. [Each person] Each permittee [authorized by the department to utilize the shower facilities, except those under the age of four,] may [secure one] obtain a shower facility key or card in accordance with provisions in section 13-234-32. [The person shall deposit the following amount with the State prior to receiving the key, as security for prompt return of the key upon termination of the use permit:

(1) \$20 if the use permit is valid for a period of more than ninety days.

(2) \$30 if the use permit is valid for a period of ninety days or less.

This deposit shall be forfeited in the event the permittee does not return the key to the department on or before the termination of the use permit.]" [Eff 2/24/94;

am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

64. Section 13-234-12, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-12 Dry storage and vessel repair. (a) A person, holding a valid mooring or commercial activity [use] permit issued by the department [allowing the person to moor a vessel in a small boat harbor,] may be authorized [by the department] to use a designated location on land within [such harbor] a state boating facility for a period not to exceed ten days in any calendar year to refurbish or repair [such] a vessel [without] upon full payment of a dry storage [fee] refundable security deposit of \$300; provided that suitable space is available and [any such] the storage [will] shall not unduly interfere with the maximum and efficient public utilization of a [small boat harbor facilities] state boating facility. [The permittee shall however, not be entitled to a reduction in the mooring fees applicable to the temporarily vacated berth. Saturdays, Sundays, and state holidays shall be excluded in the computation of the ten days free time.]

(b) The permittee shall be required to abide by the following in order to have the security deposit returned:

- (1) Abide by best management practices, as provided by the department of health, if any, that mitigate environmental impacts;
 - (2) Clean the repair or storage area of any debris due to any repairs made.
- [(b)] (c) Vessels, vessels [upon] on trailers, or empty boat trailers may, upon approval by the department, be stored on land at a [small boat harbor] state boating facility; provided that suitable space is available and such storage [will] shall not unduly interfere with maximum and efficient public utilization of [small boat harbor facilities] state boating facility. [Except as provided in subsection (a), the] The user fee for the storage or repair of vessels or boat trailers on land at a [small boat harbor] state boating facility shall be as follows:

<u>Type of Storage or Repair</u>	<u>Ala-Wai and Keehi</u> <u>[Boat Harbors] state</u> <u>boating facilities</u>	<u>All others</u>
(1) Vessels stored on land, per foot of vessel length, cradle length, or trailer length, whichever is greater, per month paved area; unpaved area :	[\$1.25] <u>\$2.50</u> [\$1.15] <u>\$2.40</u>	[\$1.15] <u>\$2.40</u> [\$1.00] <u>\$2.25</u>
(2) Empty boat trailer per month	[\$20.00] <u>\$40</u>	[\$15.00] <u>\$30</u>
(3) Minimum monthly charge for vessel storage	[\$20.00] <u>\$75</u>	[\$15.00] <u>\$60</u>
(4) The charges for one-half month or less shall be one-half of the monthly rate.		

(c) Boating equipment or other items used in connection with boats moored in [small boat harbors] state boating facilities, upon approval of the department, may be stored at [such harbors] state boating facilities if it can be done without unduly interfering with [small boat harbor] the state boating facility's operations. The monthly charges for use of such storage space shall be:

<u>Type of Storage</u>	<u>Ala-Wai and Keehi</u> <u>[Boat Harbors] state</u> <u>boating facilities</u>	<u>All others</u>
(1) Open storage on paved areas, per square foot per month	[\$.35] <u>\$1</u>	[\$.25] <u>75 cents</u>
(2) Open storage on unpaved areas, per square foot per month	[\$.25] <u>75 cents</u>	[\$.15] <u>50 cents</u>
(3) The minimum charge per month	[\$15.00] <u>\$100</u>	[\$8.00] <u>\$75</u>
(4) For less than one-half month, the charge [will] <u>shall</u> be one-half of the [above] full monthly rate <u>provided in paragraph (3).</u>		

(d) A person who does not hold a valid mooring permit for a particular [small boat harbor] state boating facility may be [permitted] allowed by the department to use a designated location on land within that [harbor] state boating facility for a period not to exceed

[six months] ten days to repair or refurbish a vessel, provided that suitable space is available and [such] storage [will] shall not unduly interfere with maximum and efficient public utilization of [small boat harbor facilities] the state boating facility. The permittee shall be required to pay a refundable security deposit of \$300 and meet the conditions of subsection (b) and [The] the charge for the use of the land shall be the same as specified in subsection (c).

(e) The department shall not be responsible for any claim for loss or damage by reason of theft, fire or any other cause in connection with any personal property stored in the designated storage area.

(f) The user fees for a vessel or equipment stored at a state boating facility that is in violation of this section or section 13-231-17 shall be:

<u>Length of storage</u>	<u>Fees</u>
(1) <u>30 days or less</u>	<u>1-1/2 times the fees stated in subsections (b) and (c);</u>
(2) <u>31-60 days</u>	<u>2 times the fees stated in subsections (b) and (c) for the period over 30 days;</u>
(3) <u>More than 60 days</u>	<u>3 times the fees stated in subsections (b) and (c) for the period over 60 days."</u>

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

65. Section 13-234-13, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-13 Gear locker fee. (a) The charge for the use of gear lockers provided by the State shall be:

- (1) Standard wood locker \$5.50 per month
- (2) Triangular fiberglass locker..... \$3.00 per month]

<u>Type of gear locker</u>	<u>Fee</u>
(1) <u>Gear locker with a volume equal to or greater than eleven cubic feet.</u>	<u>\$7.50 per month</u>
(2) <u>Gear locker with a volume of less than eleven cubic feet.</u>	<u>\$5 per month</u>

(b) In the event that permission is given by the department for a boat owner to provide a personal gear locker pursuant to section 13-232-44, the charge for storage space, while the permit remains in effect, shall be [thirty] fifty per cent of the rate established in subsection (a)." [Eff 2/24/94; am] (Auth: HRS

§§200-2, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-10, 200-12, 200-22, 200-24)

66. Section 13-234-16, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-16 Permit processing fees. The [charge] non-refundable fee for the processing of a use permit shall be as follows:

- (1) Initial issuance of permanent permit for docking, mooring, or anchoring a vessel (see section 13-231-3) .. \$5; initial issuance of commercial permit .. \$25;
- (2) Renewal of permanent permit for docking, mooring, or anchoring a vessel (see section 13-231-5) .. \$5; renewal of commercial permit .. \$15;
- (3) Revision of permit:
 - (A) At owner's request .. \$5; or
 - (B) By department's action (see section 13-231-7) .. no charge; and
- (4) All other use permits listed in section 13-231-3:
 - (A) Initial issuance \$5;
 - and
 - (B) Renewal of permit \$3.]

<u>Permits</u>	<u>Fees</u>
(1) <u>Initial issuance of a commercial activity permit</u>	<u>\$50;</u>
(2) <u>Renewal of a commercial activity permit</u>	<u>\$50;</u>
(3) <u>Issuance of film permits:</u>	<u>\$25;</u>
(4) <u>Substantive revision of permit:</u>	
(A) <u>At owner's request:</u>	<u>\$6.50; or</u>
(B) <u>By department's action (see section 13-231-7)</u>	<u>no charge.</u>

[If a permittee utilizing any property or facility fails to renew a use permit on or before the date on which it expires, the applicable renewal fee plus a penalty fee of \$1 per month shall be collected from the permittee for each month or fraction of a month the permittee is late in applying for renewal of a permit and any other penalty fees provided by these rules.]" [Eff 2/24/94; am] (Auth: HRS §200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-12, 200-22, 200-24)

67. Section 13-234-19, Hawaii Administrative Rules, is amended to read as follows:

“§13-234-19 Kailua-Kona pier [Parking] parking fees[- reserved space]. [(a) The fee for parking a vehicle in a space reserved by the department for the exclusive use of any person shall be as follows:

- (1) Reserved parking, covered \$30 per month.
- (2) Reserved parking, uncovered \$20 per month]

(a) Individuals possessing a valid mooring permit for Kailua Bay may be issued a permit for automobile parking at a rate of \$75 per quarter, per permit.

[(b) The establishment of reserved parking spaces normally does not permit maximum efficient public utilization of parking facilities. Therefore, parking spaces shall not be designated for the exclusive use of any person, other than when necessary for the parking of government or other official vehicles, unless suitable space is available and such use will not interfere with maximum and efficient public utilization of small boat harbor facilities. Any reserved spaces established shall be assigned on a "first-come, first-served" priority system. The following shall be eligible for assignment to any reserved parking space that is established for use by the public:

- (1) A person holding a valid use permit authorizing the person to moor that person's vessel at the small boat harbor, the vessel owner, co-owner, and master; and
- (2) An owner or employee of a business or organization operating under the provisions of a lease or other agreement authorizing the owner or employee or the business or organization to engage in a business or commercial activity at the small boat harbor.]

(b) Annual ground transportation fees shall be in accordance with section 13-234-38.

[(c) No person shall park a vehicle in a reserved parking space so designated by a posted sign unless authorized by the department.]” [Eff 2/24/94
am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp:
HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

68. Section 13-234-20, Hawaii Administrative Rules, is amended to read as follows:

“§13-234-20 Salvage fee. The owner or designated representative of a vessel in danger that is [saved, rescued, or secured] salvaged pursuant to section 13-231-19 shall be charged a fee for services and materials based on prevailing commercial rates plus ten per cent. In the cases where the department must perform remedial action more than once in a three hundred and sixty-five-day period, beginning on the date of the first remedial action, the

fees and charges shall be calculated in the following manner:

- (1) Second occurrence: two times direct costs
- (2) Third occurrence: three times direct costs
- (3) Fourth and further occurrence: four times direct costs

(c) The owner, or authorized representative is responsible for paying all fees and charges within thirty days of notice, as described in section 13-230-6. The notice shall inform the responsible party of the fees and charges relating to the remedial action. Delinquency in excess of thirty days in payment of any fees owed to the department shall result in assessment of interest computed at the rate of one per cent per month and suspension of the mooring permit. Delinquency of over sixty days shall cause the automatic revocation of the mooring permit, as described in section 13-231-6." [Eff 2/24/94 am]

(Auth: HRS
§§200-2,
200-4, 200-7)
(Imp: HRS

§§200-2, 200-4, 200-7)

69. Section 13-234-21, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-21 Principal habitation application fee. Prior to [filing or renewing an application for] the issuance of a principal habitation permit as provided in section 13-231-27(a)(2) the applicant shall pay to the department [an] a non-refundable application fee of [\$15] \$25. [The fee is not refundable.]" [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

70. Section 13-234-23, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-23 [Application] Annual application fee for moorage. If all suitable berths in a [small boat harbor] the state boating facility have been allocated, [to others] a person [may] shall apply annually, subject to the payment of application fees, for a future vacancy or to move in the future to another berth in the same [harbor] state boating facility, as [prescribed] provided in section 13-231-5. In [small boat harbors] state boating facilities where categories of berths have been established pursuant to section 13-231-5 only a single application fee [or fee for renewal of an existing application] shall be

levied if any applicant applies for [or renews applications for] more than one category of berth, provided that all applications were submitted on the same date, and provided that applications for Ala Wai and Keehi state boating facilities shall be limited to not more than two berth categories for a single application fee.

- (1) The application fee [or fee for renewal] of an existing application for a regular mooring permit shall be [\$15] \$25 per year for any person who is a resident and \$100 per year for all other persons.
- (2) The application fee [or fee for renewal of an existing application] for a temporary mooring permit or an application to transfer in the future to another berth with the same characteristics in the same [harbor] state boating facility shall be \$5 per year.
- (3) No application for moorage[, renewal of such application], or for berth transfer shall be accepted until the applicant has paid the [prescribed] application fee. The application fee is [not refundable] non-refundable, provided that the paid application fee for moorage [fee paid], less a \$5 service charge, shall be returned to an applicant if the department rejects the [applicant's] application [or a renewal thereof] pursuant to section 13-231-82." [Eff 2/24/94; am _____] (Auth: HRS §§200-2, 200-10, 200-22, 200-24) (Imp: HRS §§200-10, 200-12, 200-22, 200-24)

71. Section 13-234-25, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-25 Fees [and charges] for commercial vessels [at state small boat harbors] using state boating facilities and beaches of the State. (a) [The] Notwithstanding the provisions of section 13-234-3 [notwithstanding], a commercial activity permittee shall be required to pay the greater of the following fees [and charges shall be assessed] for mooring in, or [use] using [of,] state [small boat harbor] boating facilities, or beaches of the state, as defined in section 13-230-8, [and] in addition to any other fees or charges for services as provided by rule for a commercial vessel:

- (1) [For vessels with a commercial and regular mooring permit. The fee per month, per vessel, for mooring of and use of the small boat harbor or any of the facilities by a commercial vessel in these harbors shall be two times the mooring fees prescribed in section 13-234-3 or two per cent of the monthly gross receipts, whichever is greater. In addition to the aforementioned fee for mooring a commercial vessel in these small boat harbors, the permittee shall also pay fees and charges in the amounts prescribed in these rules for any other facilities and services utilized in the small boat harbor.] An annual flat fee of \$300 per passenger seat, except in Kaneohe Bay where the annual flat fee shall be \$250 per passenger seat, payable in twelve monthly installments, that is based on the carrying capacity of the vessel as specified in the certificate of inspection issued by the United States Coast Guard, or six passengers for an uninspected vessel; or

- [(2) For vessels with a commercial permit only, the fee per month, per vessel for the use of these small boat harbors or any of their facilities by a commercial vessel moored elsewhere shall be the greater of \$100 or two per cent of the monthly gross receipts.]
- (2) Two times the mooring fees as provided in sections 13-234-3 and 13-234-4 for a commercial vessel moored in a state small boat harbor or offshore mooring area; or
- [(3) The report of gross receipts shall be received by the department not later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Failure to submit the report of gross receipts as required shall be cause for termination of the commercial permit.]
- (3) A monthly fee of \$200 for vessels utilizing the beaches of the State as defined in section 13-230-8; or
- [(4) For vessels which have been issued a valid commercial permit for the use of more than one small boat harbor, the permittee shall designate the small boat harbor of principal use, and the two per cent of monthly gross receipts shall be paid to that account. The fees for commercial permits issued for other small boat harbors shall be the minimum amount specified in paragraph (2).]
- (4) One per cent of the annual gross receipts as defined in section 13-231-56.
- [(5) For vessels issued a temporary mooring permit and a commercial permit, the fee per month shall be the greater of the temporary mooring fees required by section 13-234-5 or two per cent of the monthly gross receipts]
- (b) Notwithstanding the provisions of subsection (a), commercial activity permittees whose commercial activity permit is issued in accordance with section 13-231-71 shall be required to pay the greater of the following fees:
 - (1) An annual flat fee of \$150 per vessel, payable in twelve monthly installments; or
 - (2) One per cent of the annual gross receipts as defined in section 13-231-56; or
 - (3) A minimum fee of \$1,800 per year, payable in twelve monthly installments.
 - (c) When non-motorized vessels are used in conjunction with a vessel carrying a certificate of inspection issued by the United States Coast Guard, or six passengers for an uninspected vessel, the fee shall be the greater of the fees described in subsections (a) or (b).
 - (d) The annual flat fee, as provided in subsections (a)(1) and (b)(1) shall be increased by the department at a rate of three per cent per year beginning twelve months after the adoption of these rules and each subsequent year thereafter for a period not to exceed five years. The department may re-evaluate the percentage increase as described in this subsection every five years.
 - (e) The percentage of gross receipts as described in subsections (a)(4) and (b)(2) shall be the percentage of total gross receipts generated over the twelve-month duration of the commercial activity permit. The commercial activity permittee shall submit an annual statement of gross receipts, including payment of any additional amounts that may be due to the department, within thirty days of the expiration date of the permit. Gross receipts paid to the department under an existing commercial activity permit prior to the effective date of these

rules shall be credited against any gross receipts due under this section. Failure to submit the report of gross receipts for a period in excess of sixty days following notice as provided in section 13-230-6, shall be cause for the automatic revocation of the commercial activity permit and the permittee shall have no right to retain the commercial activity permit unless the deficiency is corrected within thirty days from the date of revocation.

(f) The fee assessed for the commercial use of a state boat ramp shall entitle the commercial activity permittee to the use of any other state boat ramp on the same island without an additional charge, except for boat ramps listed in section 13-231-67(e). When the commercial activity permit is issued, the department shall also provide a set of commercial trailer decals, at no charge, which shall be displayed on each side of the forward end of the trailer tongue.

(g) Vessels used by a commercial activity permittee for shuttle operations transporting passengers to and from the commercial activity permittee's primary operating vessel, and to vessels under contract to perform shuttle operations for passenger cruises who moor the vessel at a state boating facility, shall be required to designate the state boating facility of principal use and the fee charged under this section shall be paid to the principal use account.

[(6)] (h) [Audit.] The department [reserves the right to] may conduct [an] a financial audit [as necessary] of the records of any commercial account to determine the accuracy of reported gross receipts [fees owing to the department, and] or to inspect any other financial information [necessary and proper] directly related to the [enforce] enforcement of these rules after providing notice, as described in section 13-230-6, not less than thirty days prior to the audit.

[(b)] (i) The department may, by lease, permit, or mooring permit, in accordance with state [statues] statutes grant the use or possession of [small boat harbor] state boating facilities. The leases or charges, and other conditions in accordance with law, in lieu of and notwithstanding the provisions for fees [and charges] specified in these rules." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

72. Section 13-234-26, Hawaii Administrative rules, is amended to read as follows:

"§13-234-26 Passenger user fees. (a) Notwithstanding the provisions of section 13-234-25, [Any] passenger vessel or cruise vessel [which is used for private gain and does] companies engaged in commercial activities that do not [have a valid mooring permit or] possess a commercial activity permit and [which uses] whose vessels enter a state [small boat harbors property or facilities] boating facility for purposes of embarking or disembarking passengers shall be required to pay the following user fees in addition to any other fees required by this chapter:

<u>Categories</u>	<u>One time user fee per passenger</u>
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(1)	[Per passenger] <u>Passengers</u> (includes in transit)[--] embarking to or from shore to ship[.....] <u>within a state boating facility.</u>	\$2
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[(2) Passengers in transit on a vessel on a continuous trip whose point of origin and termination is a state small boat harbor, a total of disembarking and embarking at each port per passenger.....\$1.50

(3) Passengers embarking and disembarking on occasional and infrequent use on special charter when approved in advance of voyage as provided in section 13-231-57(c)(3).....\$1.50]

(b) Any passenger vessel or cruise vessel using a [dock, pier or wharf in a state small boat harbor] state boating facility for disembarking and embarking passengers by means of any boat or lighter while hove to or moored offshore, shall pay a user fee per passenger [for disembarking and embarking at each small boat harbor] as follows:

	<u>Categories</u>	<u>User fee each way</u>
(1)	Passenger vessels engaging only in [inter-island] <u>intra-state</u> commerce[:.....]	[\$.30] <u>\$1.40</u>
(2)	Passenger vessels engaging in international or inter-state commerce[:.....]	[\$1] <u>\$1.75</u>

(c) Vessels operated by a federal or state agency [are] shall be exempt from the provisions of this subsection.

[(c)] (d) [A report] The ship's agent shall [be filed] file a tally of number of passengers based on the passenger manifest with the department on a form [acceptable to] provided by the department. The tally shall be submitted within thirty days after the date of embarking or disembarking of passengers over state boating facilities and the charges due shall be remitted along with the report.” [Eff 2/24/94

am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

73. Section 13-234-28, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"§13-234-28 Negotiable instruments; service charge. (a) The service charge for any dishonored check, draft, certificate of deposit or other negotiable instrument [is] shall be [\$12] \$20."

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-10, 200-22, 200-24)

74. Section 13-234-29, Hawaii Administrative Rules, is amended to read as

follows:

"§13-234-29 Vessel inspection fee. The non-refundable vessel inspection fee for [a vessel] an inspection performed by the department shall be \$25 and shall be due prior to the issuance [or reissuance] of a regular mooring permit [shall be \$15. The fee is not refundable.] A vessel owner shall make an appointment with the harbor agent [not less than] at least five working days prior to [having] the vessel [inspected] inspection. A fee of [\$10] \$25 shall be charged if notice of cancellation by the vessel owner is [not] given to the harbor agent [not] less than two working days prior to the scheduled inspection. [The fee for vessels exempted from numbering in section 13-241-2, Hawaii Administrative Rules, and open skiffs and dinghies less than thirteen feet in length shall be \$5.]" [Eff 2/24/94;am

] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

75. Section 13-234-31, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-31 User [Fee] fee for commercial use of boat [launching] ramps and other state boating facilities. (a) The fee for the use of state launching ramps, wharves, or other state boating facilities except state small boat harbors shall be [\$75 per month or two per cent of gross receipts, whichever is greater] in accordance with section 13-234-25. The single user fee assessed for the use of a state [launching] boat ramp shall entitle the permittee to use any other state [launching] boat ramp on the same island without additional charge, except for those [launching] boat ramps listed in section 13-231-67.

(b) For commercial activities other than embarking or disembarking passengers from boat ramps and other state boating facilities, the fee shall be \$75 per month." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

76. Section 13-234-32, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"§13-234-32 Small boat harbor facility key deposits. (a) Each person authorized to secure a shower facility key shall deposit the following amount with the State as security for prompt return of the key upon termination of expiration of the use permit.:

(1) \$30 [if the use permit is] for permits valid for a period of more than thirty days; or

(2) \$50 [if the use permit is] for permits valid for a period of thirty days or less;

(b) Each person authorized to secure a key, except for a regular mooring permittee, for other harbor facilities, such as security gates or restrooms, shall deposit the following amounts with the department prior to receiving the key:

- (1) \$10 if the use permit is valid for more than thirty days; or
 - (2) [\$25] \$50 [if the] for a mooring [use] permit [is] valid for thirty days or less.
 - (c) The key security deposit shall be forfeited in the event the permittee does not return the key to the department on or before the termination of the use permit, or when the permittee is required to replace a key which has been lost or stolen.
 - (d) Regular mooring permittees who fail to return any harbor facility keys at the time the regular mooring permit expires or is terminated, shall forfeit the security key deposit."
- [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

77. 13-234-33, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-33 Business transfer fee. (a) Whenever a stockholder or owner of an interest in a corporation or other business [which] that has been issued a commercial activity permit sells or transfers ten per cent or more of the stock or interest in the firm, either as a single transaction or an aggregate of several transactions, to any person who is not a stockholder or owner of record on the effective date of these rules, the seller or person transferring such stock or interest shall pay to the department a business transfer fee based on the passenger-carrying capacity of the vessel, and shall be as follows:

	<u>Vessel type</u>	<u>Fees</u>
(1)	Vessels used for bare boat (demise) and sailing charters carrying six or less passengers[.....]	\$ 2,500
(2)	Vessels registered by the State or documented by the U. S. Coast Guard to carry six passengers or less, used for charter fishing or other commercial purpose[.....]	\$ 5,000
(3)	Vessels certified by the U. S. Coast Guard to carry seven to twenty-[five] <u>four</u> passengers[.....]	\$10,000
(4)	Vessels certified by the U. S. Coast Guard to carry twenty-five to forty-nine passengers[.....]	\$15,000
(5)	Vessels certified by the U. S. Coast Guard to carry fifty to seventy-four passengers[.....]	\$25,000
(6)	Vessels certified by the U. S. Coast Guard to carry seventy-five to ninety-nine passengers[.....]	\$40,000

(7)	Vessels certified by the U. S. Coast Guard to carry one hundred to one hundred forty nine passengers[.....]	\$75,000
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(b) When less than one hundred per cent of the interest in the corporation is transferred, the business transfer fee shall be based upon a like percentage of the business transfer fee provided in subsection (a).

(c) Where there are multiple vessels on one permit, the business transfer fee shall be based on the largest capacity vessel.

(d) The spouse or children of the permittee or a permittee who enters into an employee stock option plan shall be exempt from the provisions of subsection (a)." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

78. Chapter 13-234-34, Hawaii Administrative Rules, is amended to read as follows:

"§13-234-34 User [Fee] fee for recreational [use of] state boat [launching] ramps. (a) [An annual] A boat ramp decal user fee of [\$25] \$10 per month shall be paid by owners of trailered vessels using state [launching ramps and other] boating facilities for recreational and fishing purposes to gain access to the waters of the State for the purpose of defraying costs of maintenance of the state boating facilities and use of fresh water.

(b) Owners of trailered commercial passenger vessels who pay the commercial fee for use of state launching ramps and other boating facilities under the provisions of section 13-234-31 are exempt from the requirements of subsection (a).]

[(c)] (b) [This] In addition to the vessel registration fee, the annual boat ramp decal fee described in subsection (a) shall be paid at the time of [initial] registration or registration renewal[, in addition to the vessel registration fee].

[(d)] (c) The recreational owner shall be furnished a set of trailer decals by the department upon payment of this fee, [which] Current boat ramp decals shall be affixed to each side of the forward end of the trailer tongue [as evidence of payment] whenever the vessel owner utilizes a state boat ramp.

(d) Notwithstanding subsection (c), a boat dealer or manufacturer shall be allowed to place the ramp decal on the dashboard of the vehicle used to transport the demonstration vessel." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

79. Chapter 13-234, Hawaii Administrative Rules, is amended by adding a new section 13-234-36 to read as follows:

"§13-234-36 Damage to state property. Any person responsible for damage to state property shall make repairs in accordance with department specifications. If the department determines that the repairs are completed improperly or if the responsible party does not make

the repairs within thirty days, unless otherwise agreed to in writing by the department, the department shall have the option of repairing the damage and shall assess the responsible party as follows:

(1) The direct labor charges including overtime and cost of materials plus a fifty-six percent overhead surcharge if the repairs are made by State employees; and

(2) The costs of all contractors employed and all time charges incurred by the department, plus a fifty-six percent overhead surcharge, all subject to a thirty percent administrative surcharge." [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

80. Chapter 13-234, Hawaii Administrative Rules, is amended by adding a new section 13-234-37 to read as follows:

"§13-234-37 Labor and equipment charges. (a) Charges for cleaning and other services when provided by the State are as follows:

- (1) The rate charged for State employees shall be the actual hourly pay of the employee, plus overtime, if applicable, plus a fifty-six per cent overhead surcharge.
- (2) The rate for the operator of the equipment in this section shall be the actual hourly pay of the employee, plus overtime, if applicable, plus a fifty-six per cent overhead surcharge.
- (3) Hourly rates for equipment used by State employees shall be assessed at the following rates, excluding the operator:

<u>Equipment</u>	<u>Fee</u>
(A) <u>½ ton or 3/4 ton pickup truck with operator</u>	<u>\$11</u>
(B) <u>Work-boat without operator or crew</u>	<u>\$25</u>

- (4) Dump fees per ton shall be at cost plus a fifty-six per cent surcharge.
- (5) Equipment rental charges shall be based on the actual charges and shall accrue from the time the equipment is put into service to the time it is returned to its owner.
- (b) State equipment shall only be operated by State employees."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

81. Chapter 13-234, Hawaii Administrative Rules, is amended by adding a new section 13-234-38 to read as follows:

"§13-234-38 Ground transportation fees. (a) The annual charge for a permittee to operate a bus, van or other vehicle possessing a certificate of public convenience and necessity within a state boating facility shall be as follows:

<u>Transportation</u>	<u>Fee</u>
(1) <u>Vans, limousines, station wagons, capable of carrying eight to seventeen passengers, mini busses capable of carrying a maximum of twenty-five passengers; or</u>	<u>\$200</u>
(2) <u>Motor coaches capable of carrying twenty-six or more passengers</u>	<u>\$400</u>

(b) Commercial activity permittees shuttling passengers utilizing their own vehicle or a leased vehicle, are exempt from the fees of this section.

(c) In addition to subsection (a), applicants shall provide to the department proof of the following insurance coverage:

<u>Vehicle capacity</u>	<u>Minimum property damage liability coverage per occurrence</u>	<u>Minimum bodily injury liability coverage per occurrence</u>
(1) <u>Vehicles capable of carrying one to seven passengers</u>	<u>\$ 25,000</u>	<u>\$ 75,000</u>
(2) <u>Vehicles capable of carrying eight to seventeen passengers</u>	<u>\$ 50,000</u>	<u>\$ 100,000</u>
(3) <u>Vehicles capable of carrying a maximum of twenty-five passengers</u>	<u>\$300,000</u>	<u>\$ 750,000</u>
(4) <u>Vehicles capable of carrying twenty-six or more passengers</u>	<u>\$500,000</u>	<u>\$1,000,000</u>

(d) All permittees shall display a decal on the left-hand side of the rear bumper."

[Eff] (Auth: HRS 200-2, 200-4, 200-22, 200-24) (Imp: HRS 200-2, 200-4, 200-22, 200-24)

82. Chapter 13-234, Hawaii Administrative Rules, is amended by adding a new section 13-234-39 to read as follows:

"§13-234-39 Recovery of administrative expenses. (a) An owner and any co-owners whose vessel or equipment is declared abandoned, derelict, or is moored or stored in violation of the rules of the State or chapter 200, HRS, shall be responsible for the payment of the following fees incurred by the department during the period beginning on the date of posting and continuing to the date of disposal by the department:

(1) Mooring fees, including interest and penalties;

- (2) Storage fees;
- (3) Harbor and law enforcement personnel costs;
- (4) Legal counsel fees;
- (5) Legal notice publication fees;
- (6) Photo film and printing costs;
- (7) Maintenance and repair costs;
- (8) Towing and vessel relocation costs;
- (9) Public auction expenses;
- (10) Area clean-up and disposal fees; and
- (11) Miscellaneous out-of-pocket expenses directly related to the administration or handling of the vessel or equipment.

(b) The fees and costs in subsection (a) are in addition to any fines a court or the board of land and natural resources may impose.

(c) All costs incurred by the department shall be paid within thirty days of the mailing or personal delivery of the official written notice of the final amount due and payable to the department. Non-payment of the full amount due shall result in one or more of the following:

- (1) Legal action in a court of law to recover amounts due;
- (2) Referral of the matter to a collection agency licensed to do business in the State; or
- (3) Recovery of amounts due by any other means as prescribed by law."

[Eff _____] (Auth: HRS 200-2, 200-4, 200-22, 200-24)
(Imp: HRS 200-2, 200-4, 200-22, 200-24)

83. Section 13-241-26, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

“§13-241-26 Negotiable instruments; service charge. (a) The service charge for any dishonored check, draft, certificate of deposit or other negotiable instrument [is \$12] shall be in accordance with section 13-234-28.”

[Eff 2/24/94 am _____] (Auth: HRS §§200-2, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-22, 200-24)

84. Section 13-242-13, Hawaii Administrative rules, is amended to read as follows:

“§13-242-13 Fines and penalties. [Pursuant to section 200-25, Hawaii Revised Statutes, any person violating any of these rules, shall be fined not more than \$1,000 or _or imprisoned not more than one year, or both provided that, in addition to or as a condition to the suspension of the fines and penalties, the court may deprive the offender of the privilege of operating any vessel, on the waters of the State for a period of not more than two years.]

Fines and penalties shall be assessed in accordance with section 13-230-4." [Eff 2/24/94 am
] (Auth: §§200-2, 200-3, 200-4, 200-14,
200-25) (Imp: §§200-2, 200-3, 200-4, 200-14, 200-25)

85. Section 13-244-19, Hawaii Administrative Rules, is amended to read as follows:

"§13-244-19 [Authorization] Permit required to hold [regatta, marine parade, boat race or exhibition] special events. (a) [Definition of terms] Special events used in this chapter[. "Regatta" or "marine parades, means an organized water event of limited duration which is conducted according to a prearranged schedule.] includes, but is not limited to, any land based or ocean competition, exhibition of boating, water-skiing, parasailing, canoeing, kayaking, rowing, surfing, fireworks displays, thrill craft, personal water craft, regattas, marine parades, and swimming events.

- (b) [Authorization] Permit required; submission of application.
- (1) Any person or organization planning to hold a [regatta or marine parade] special event [which] that, by its nature, circumstances or location, [will introduce] introduces extra or unusual hazards to the safety of persons or property on the waters of the State shall submit an application for a permit to the department on the form prescribed by the chairperson of the board of land and natural resources. No person shall hold such a [regatta or marine parade] special event, unless the authorization of the chairperson has been secured[, except that the chairperson's authorization is not required if prior authorization has been secured from the United States Coast Guard]. Examples of conditions which are deemed to introduce extra or unusual hazards to the safety of life include, but are not limited to[:] an inherently hazardous competition, the customary presence of commercial or pleasure craft in the area, any obstruction of navigable channels [which] that may reasonably be expected to result from the activity, and the expected accumulation of spectator craft.
- (2) Where the special waters events are to be held regularly or repeatedly in a single area by an individual or organization, the chairperson may, subject to conditions set from time to time by the department, grant a permit for the series of events for a fixed period of time, not to exceed one year.
- (3) The application shall be submitted no less than thirty days prior to the start of the proposed event.
- (4) The application shall include the following details:
 - (A) Name and address of sponsoring organization[:];
 - (B) Name, address and telephone number of person or persons in charge of the event[:];
 - (C) Nature and purpose of the event[:];
 - (D) Information as to general public interest[:];
 - (E) Estimated number and type of watercraft participating in the event[:];

- (F) Estimated number of spectators and number and type of spectator watercraft[.];
- (G) Number of boats being furnished by sponsoring organization to patrol event[.];
- (H) Time schedule and description of events[.] and
- (I) A section of a chart or scale drawing showing the boundaries of the event, various water courses or areas to be utilized by participants, officials, and spectator craft.

(c) [An authorization by the chairperson] A permit issued by the department does not exempt a person holding an event from compliance with applicable federal law. An approved permit shall establish a temporary restricted area for the duration of the event and may allow event activities that are not otherwise allowed by these rules.

(d) The applicant of a business sponsored amateur or professional event shall complete an application provided by the department, and pay a \$10 non-refundable application fee. In addition to the application fee, the sponsor shall pay the lesser of one dollar per participant or \$250. A not-for-profit organization that charges only a nominal fee to cover administrative costs and conducts special events at a state boating facility, on beaches of the state, or in or on the waters of the state at a frequency or magnitude that does not significantly utilize, burden, or compromise the resources at a state boating facility, on beaches of the state, or the waters of the state, may be exempted by the department on a case-by-case basis from the provisions of this subsection.

(e) The department may waive the fees described in subsection (d) for authorized not-for-profit or public service events.

(f) The applicant shall pay an additional \$25 at the time of the submittal of the application to the department when requests are received less than thirty days from the date of the event or when substantive amendments are made to previously issued permits.

(g) The applicant of a business and non-business sponsored amateur or professional event shall provide proof of insurance as provided in section 13-231-65." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-22, 200-24)

86. Section 13-250-4, Hawaii Administrative Rules, is adopted to read as follows:

"13-250-4 Fines and Penalties. Fines and penalties shall be assessed in accordance with section 13-230-4." [Eff] (Auth: §§200-2, 200-3, 200-4, 200-14, 200-25) (Imp: §§200-2, 200-3, 200-4, 200-14, 200-25)

87. Section 13-250-5, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"13-250-5 Definitions. ***
"Manually-propelled vessel" means a manually-propelled vessel primarily moved only by

hands, feet, oars, poles or paddles. Surfboards shall not be considered a vessel and shall be excluded from this definition.

“State boating facility,” means a State small boat harbor, boat ramp, off-shore mooring, pier, wharf, State property, or landing under the jurisdiction of the department.”

"Shuttle," means to embark passengers at one location and disembark them at the same location or at another location."

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

88. Section 13-251-31, Hawaii Administrative Rules, is amended to read as follows:

"§13-251-31 Owner of passenger-carrying vessels, for-rent surfboards, for-rent sailboards, for-charter or rent motorboats, or for-rent water sports equipment to give proof of financial responsibility. ***

(b) The owner shall submit to the department evidence that there has been issued to the owner by an insurance carrier authorized to do business in the State, and naming the State as an additional insured, a public liability insurance policy or policies covering the operations under the permits issued in accordance with this chapter and with the following minimum coverages:

- (1) In the case of vessels carrying passengers for hire, the [following amounts for bodily injury and damage to property per occurrence:
 - (A) \$100,000 for vessels authorized to carry not more than six passengers;
 - (B) Not less than \$300,000 for vessels authorized to carry more than six passengers, but less than twenty-six;
 - (C) Not less than \$500,000 for vessels authorized to carry more than twenty-five passengers] insurance requirements shall be in accordance with section 13-231-65(a) and (b);
- (2) In the case of surfboard or sailboard operations, the amount of \$50,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$100,000 for bodily injury or death;
- [(3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000 for bodily injury or death;]
- [(4)] (3) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000 for bodily injury or death.
- (c) The owner shall maintain the policy or policies in full force and effect during all times that the owner is engaged in the businesses described in subsection (a), unless the owner has given proof of financial responsibility as provided in section

13-251-32." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24

89. Section 13-251-32, Hawaii Administrative Rules, is repealed:

["§13-251-32 Owner of passenger-carrying vessels, for-rent surfboards, for-rent sailboards, for-rent motorboats, and for-rent water sports equipment when no policy obtained.

(a) The department shall not register any vessel, surfboard, sailboard, motorboat, or water sports equipment rented, chartered or used for carrying passengers, as the case may be, in Waikiki or Kaanapali ocean waters if the owner thereof has not given proof of financial responsibility as provided in section 13-251-31; provided no such proof is necessary if the owner demonstrates, to the satisfaction of the department, the financial ability to respond to claims for damages as follows:

- (1) If the owner applies for registration of surfboards or sailboards, in the sum of at least \$50,000 per person injured or killed in a surfboard or sailboard operation, subject to the total coverage in any one accident of \$100,000 for bodily injury or death; or
- (2) If the owner applies for the registration of any vessel carrying passengers for hire, in the following sums for bodily injury or death per occurrence:
 - (A) \$100,000 for vessels authorized to carry not more than six passengers;
 - (B) Not less than \$300,000 for vessels authorized to carry more than six passengers but less than twenty-six;
 - (C) Not less than \$500,000 for vessels authorized to carry more than twenty-five passengers;
- (3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000; or
- (4) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000.

(b) The department shall cancel the registration of any vessel, surfboard, sailboard, motorboat or water sports equipment whenever the department determines that the owner has failed or is unable to comply with the requirements of this section."

[Eff 2/24/94 R] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

90. Section 13-251-49, Hawaii Administrative Rules is amended to read as follows:

"§13-251-49 Authority of department to suspend or revoke registration. [(a) The

department may suspend or revoke the registration of a vessel, surfboard, sailboard, or water sports equipment whenever:

- (1) The department is satisfied that the registration was fraudulently or erroneously issued;
- (2) The department determines that a registered vessel is unsafe to be operated upon the Waikiki or Kaanapali ocean waters;
- (3) A registered vessel has been sold, dismantled, or wrecked, provided that the owner of the vessel at the time it was sold, dismantled, or wrecked may, upon written application to and approval by the department, transfer the registration to another vessel of like characteristics and ownership if the replacement vessel is in operation within ninety days of the transfer;
- (4) The owner of any for-rent surfboard, for-rent sailboard or water sports equipment, or vessel carrying passengers for hire has failed or is unable to give proof of financial responsibility as provided in this subchapter;
- (5) Any catamaran's Coast Guard Certificate of Inspection has expired;
- (6) Any registered vessel boards passengers on Waikiki or Kaanapali ocean waters for a shuttle-type service and disembarks the passengers at a point other than at or near the point of boarding; or
- (7) A registered vessel has not been engaged in carrying passengers for hire in Waikiki or Kaanapali ocean waters for a period of thirty consecutive days."

(b) Upon suspending or revoking the registration of a vessel, surfboard, sailboard or water sports equipment the department shall immediately notify the owner in writing of the reason for the suspension or revocation.]

(a) Any commercial operator whose registration for a vessel, surfboard, sailboard, or water sports equipment is under review for conditions and deficiencies that may lead to the revocation or denial of a renewal of the registration, the operator shall be provided an informal review and administrative hearing as provided in sections 13-231-33 and 13-231-31." [Eff 2/24/94 am]

(Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

91. Section 13-251-51, Hawaii Administrative Rules, is amended to read as follows:

"§13-251-51 Catamaran registration limitations.***

(b) Notwithstanding this section, all owners of catamarans holding valid registrations to operate upon Waikiki ocean waters on November 6, 1981, and all owners of catamarans operating upon or under construction for operation upon Kaanapali ocean waters on the effective date of these rules, except catamarans engaged in a shuttle-type service solely on Kaanapali ocean waters, may continue operations and be permitted to apply for and renew their registration subject to compliance with all other conditions set forth in this chapter until their total number is reduced by attrition or other means to the numbers in subsection (a)." [Eff

92. Section 13-251-57, Hawaii Administrative Rules, is amended to read as follows:

"§13-251-57 Waikiki restricted areas. ***

(b) Zone A, Waikiki ocean waters.

(1) Zone A, Waikiki ocean waters means the area confined by the boundaries shown on Exhibit "B-1", June 1, 1981, located at the end of this chapter, which boundaries are described as follows:

Beginning at the makai-Ewa corner of the natatorium; then seaward on a prolongation of the Ewa wall of the natatorium to the outer edge of the reef; then along the reef in the mauka direction to the seaward end of the Kapahulu drainage groin; then seaward along a straight line connecting the seaward end of the Kapahulu drainage groin and the Ala Wai boat harbor entrance lighted buoy (Red "2"); then mauka on a prolongation of the Diamond Head boundary line of Fort DeRussy to the mean high water mark of the beach adjacent to the boundary line; then along the mean high water mark in the Diamond Head direction to the mauka-Ewa side of the natatorium; then along the Ewa side of the natatorium in a seaward direction to, and ending at, the point of beginning;

(2) Restrictions:

(A) No person shall navigate or moor a vessel in or on the Waikiki ocean waters, except that outrigger canoes operated by a duly organized canoe club, or a sailing catamaran, or a manually propelled outrigger canoe may be navigated, moored, or anchored in those waters if the vessel has been registered in accordance with this subchapter and is under the immediate control of an operator who has been issued a permit by the department to navigate in the waters. Notwithstanding this subsection, a sailing catamaran may temporarily operate in Zone A, Waikiki ocean waters, as a power-driven catamaran when necessary to protect life or property and is that vessel is registered by the department to operate in Waikiki ocean waters and under the immediate control of an operator who has been issued a valid permit by the department;

(B) No person shall navigate or moor a catamaran in or on the waters of Zone A or on the shore below the mean high water mark if four catamarans are navigating or moored in such zone;

(C) The minimum distance separating any two catamarans moored in Zone A shall be eighty feet; and

(D) There shall be no surfing in the zone between the water's edge and a point fifty yards seaward therefrom, except for learners while receiving

initial instructions under the direct supervision of a primary or senior surfboard instructor who has a permit issued by the department as provided by subchapter 1.

(E) Commercial catamaran operators who have registered their vessel in accordance with chapter 251, may transit Zone A, Waikiki ocean waters when shuttling passengers to or from the beach in Zones A or to or from other vessels, or other facilities outside of Zone A.

(c) Zone B, Waikiki ocean waters.

(1) Zone B, Waikiki ocean waters, means the area confined by the boundaries shown on Exhibit "C", June 1, 1981, located at the end of this chapter, which boundaries are described as follows:

Beginning at a point where the Diamond Head side of the boundary of Fort DeRussy intersects the mean high water mark; then seaward on a prolongation of that boundary line to a straight line connecting the Ala Wai boat harbor entrance lighted buoy (Red "2") and the Ewa end of the Kapahulu drainage groin; then to the Ewa direction to the makai-Ewa corner of the breakwater makai of the Hawaiian Village rainbow tower; then Ewa along the breakwater to the mean high water mark; then along the mean high water mark; in a mauka-Diamond Head direction to, and ending at, the point of beginning;

(2) Restrictions: No person shall navigate, moor, or anchor a vessel in or on the waters of Zone B, except that a manually propelled outrigger canoe or a catamaran propelled by sail may be operated in those waters if the vessel has been registered

in accordance with this subchapter, or that a catamaran propelled by sail capable of carrying six persons or less, with a valid permit to operate within Waikiki ocean waters under the provisions of section 13-251-51, may anchor overnight in the area adjacent to the groin in the vicinity of the Ala Wai Heliport. Notwithstanding this subsection, vessels operating from the Hilton Hawaiian Village pier are exempt from the restrictions in this paragraph

(3) Notwithstanding the provisions of paragraph (2), commercial catamaran operators who have registered their vessel in accordance with chapter 251 and who have been issued a commercial activity permit, may transit Zones B, Waikiki ocean waters when shuttling passengers to or from the beach or to or from other vessels, or other facilities outside of Zone B.

(4) Notwithstanding the provisions of paragraph (2), a vessel, other than a thrill craft, carrying six or less passengers and equipped with waterjet propulsion may transit Zone B when shuttling passengers to and from Fort DeRussy beach to an offshore location seaward of Zone B, provided that the owner has been issued a permit by the department for commercial thrill craft operations at a location in accordance with section 13-256-91." [Eff

2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

93. Section 13-252-7, Hawaii Administrative Rules, is amended to read as follows:

"§13-252-7 [Penalties] Fines and penalties. [Any person who is guilty of violating these rules shall be punished as provided in section 200-25, Hawaii Revised Statutes.] Fines and penalties shall be assessed in accordance with section 13-230-4."

[Eff 2/24/94 am] (Auth: §§200-2, 200-3, 200-4, 200-14, 200-25)
(Imp: §§200-2, 200-3, 200-4, 200-14, 200-25)

94. Section 13-253-1, Hawaii Administrative Rules, is amended to read as follows:

"§13-253-1 [Registration] Equipment registration fees. (a) The following equipment registration fees shall be paid to the department for the registration of catamarans, canoes, and surfboards, subject to registration [hereunder] as follows.

<u>Type</u>	<u>Original Registration</u>	<u>[Renewals] Registration Renewal</u>
[Catamarans, each vessel]	[\$5.00]	[\$3.50]
[Canoes, each vessel]	[\$5.00]	[\$3.50]
Surfboards, each board	[.10] <u>\$5</u>	[.10] <u>\$1</u>

[The minimum fee for surfboards shall be \$1.]

(b) The registration fee for commercial catamarans and canoes shall be in accordance with section 13-234-25." [Eff 2/24/94 am]

Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

95. Section 13-253-2, Hawaii Administrative Rules, is amended to read as follows:

"§13-253-2 Permit application fees. A [~~\$2~~] \$50 permit application fee shall be paid to the department for the issuance or renewal of a permit issued and renewed pursuant to these rules." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

96. Section 13-253-3, Hawaii Administrative Rules, is amended to read as follows:

“§13-253-3 Duplicate equipment registration certificate fee. A [\$1] \$25 fee shall be paid to the department for a duplicate registration certificate or permit lost or destroyed [, provided that the duplicating fee for surfboards will be ten cents for each board with a minimum of \$1].” [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-32, 200-33) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-32, 200-33)

97. Section 13-253-5, Hawaii Administrative Rules, is amended to read as follows:

"§13-253-5 Catamaran registration application fee. (a) Prior to filing or renewing an application for the issuance of a catamaran registration as provided in section 13-251-36, the applicant shall pay to the department a [nonrefundable] non-refundable application fee of [\$5] \$50.

(b) Commercial catamaran operators possessing a valid commercial activity permit shall be exempt from the provisions of subsection (a) but shall pay a permit processing fee as provided in section 13-234-16." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

98. Section 13-255-7, Hawaii Administrative Rules, is amended to read as follows:

"§13-255-7 [Penalties] Fines and penalties. [Any person who is guilty of violating these rules shall be fined not more than \$10,000 as provided in section 200-14, Hawaii Revised Statutes.] Fines and penalties shall be assessed in accordance with section 13-230-4." [Eff 2/24/94 am] (Auth: §§200-2, 200-3, 200-4, 200-14, 200-25) (Imp: §§200-2, 200-3, 200-4, 200-14, 200-25)

99. Section 13-256-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-3 Commercial operator permit requirements. (a) All operators of commercial vessels, water craft or water sports equipment, who do not possess a valid commercial activity permit, shall apply for a commercial operator permit to be issued by the department. The applicant for such permit shall comply with the applicable provisions stated in Hawaii Administrative Rules, and Ocean Waters, Navigable Streams and Beaches, Sections 13-251-1 through 13-251-20. [A valid commercial use permit issued to the owner of a vessel to operate from state harbor or launching ramp facilities shall satisfy the commercial operator permit requirement of this section for the operation of that particular vessel.]"

[Eff 2/24/94 am] (Auth: HRS §§200-22, 200-24)
(Imp: HRS §§200-22, 200-24)

100. Section 13-256-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-4 Commercial [Vessel] vessels and water sports equipment registration requirements. (a) All commercial vessels, water craft or water sports equipment shall be registered with the department for commercial use in compliance with [Sections] sections 13-251-36 to 13-251-52.

(b) Commercial [use] activity permits issued by the department for commercial vessels operating from [state harbors or] state boating facilities, except for beaches under the jurisdiction of the division, are exempt from the requirements of this section." [Eff 2/24/94 am

] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

101. Section 13-256-6, Hawaii Administrative Rules, is amended by amending subsection (c) to read as follows:

"§13-256-6 Transferability of commercial [use] activity permits. ***

(c) A commercial [use] activity permit issued for a thrill craft or parasail operating area shall [automatically terminate upon the transfer of any or all interest in the corporation or other business entity holding the permit] be fully transferable upon the payment of a business transfer fee in accordance with section 13-256-7(b). No more than one transfer every two years shall be authorized with respect to any given permit, except transfers between family members for the purpose of business reorganization." [Eff 2/24/94 am]
(Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-2, 200-3, 200-10, 200-22, 200-24)

102. Section 13-256-7, Hawaii Administrative Rules, is amended by amending subsections (a) and (b) to read as follows:

"§13-256-7 Business transfer fee. (a) [Whenever a stockholder or owner of an interest in a corporation or other business which has been issued a commercial use permit sells or transfers stock or interest in the corporation, either as a single transaction or as an aggregate of several transactions, to any person or business entity who is not a stockholder or owner of record on the effective date of these rules, the seller or person transferring such stock or interest shall pay to the department a business transfer fee which is the greater of (1) two per cent of the gross receipts which are directly attributable to the use of the commercial use permit issued by the department for the twelve month period prior to the date of sale, or (2) ten per cent of the net value of the sale of the stock or interest in the business as determined by the difference between the sale price and an equal percentage of the appraised value of the assets of the business] Transfer of a commercial activity permit for any commercial activity, except thrill craft and parasailing activities, shall be accomplished in accordance with section 13-234-33.

[(b) The value of the stock or interest transferred shall be as mutually agreed to by the seller and the department. In the case of a business which engages in more than one type of business activity, only the value of the business activity which is dependent upon the possession and use of the commercial use permit shall be considered for the purposes of this section. In those cases where the transfer is made for consideration other than legal tender, the appraised or market value of the item of consideration given in exchange for the interest in the business shall be used.]

(b) Business transfer fees for a thrill craft or parasailing permit shall be in accordance with section 200-30(7)(j), Hawaii Revised Statutes."

[Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

103. Section 13-256-8, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-8 Owner required to report change in ownership, address and other changes. (a) In addition to the provisions in section 13-251-44, the holder of any commercial [use] activity permit issued under this chapter shall notify the department in writing within seven days if:

- (1) The owner no longer has possession of the permitted vessel or water sports equipment[.];
- (2) All or any interest in the permitted vessels or water sports equipment is transferred to or assigned to another person or business entity[.];
- (3) The owner's address or telephone number changes[.]; or
- (4) There is a change in corporate officers."

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

104. Section 13-256-9, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-9 Insurance. The insurance requirements for commercial vessels shall be [not less than \$50,000 for property damage and not less than \$500,000 personal liability for vessels authorized to carry one to twenty-five passengers, and not less than \$1,000,000 for personal liability for vessels authorized to carry more than twenty-five passengers. The liability insurance shall name the State as additional insured.] in accordance with section 13-231-65." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

105. Section 13-256-10, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-10 Revocation. [(a) The department may immediately revoke a commercial use permit without the necessity for a hearing for any activity which does or may endanger the health or safety of passengers or the public.

(b) The department may revoke a commercial use permit for violation of any rules of the department if after 72 hours notice of the violation by the department the permittee fails to cure the violation.]

(a) Revocation of a commercial activity permit shall be done in accordance with section 13-231-6." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

106. Section 13-256-11, Hawaii Administrative Rules, is amended to read as follows:

“§13-256-11 Fees. (a) Fees required to be paid to the department are as follows:

- (1) [Registration fee.] A equipment registration fee shall be payable at time of issuance and renewal [shall be] as prescribed in section 13-253-1;
- (2) [Operator permit fee.] A commercial operator permit application fee shall be payable at time of issuance and or renewal of the permit [shall be] as prescribed in [§] section13-253-2;
- (3) Commercial operating area [use] permit fee shall be as follows: [A monthly commercial use permit fee shall be the greater of \$75.00 per month, payable in advance, or 2% of the monthly gross receipts. The report of gross receipts shall be submitted to and received by the department not later than the end of the month following the month covered by the report and shall be submitted on a form acceptable to the department. A permittee possessing both a harbor commercial use permit and a commercial operating area use permit who is paying 2% of gross receipts under the commercial harbor use permit shall not be required to pay an additional 2% of gross receipts under the commercial operating area use permit]
 - (A) For thrill craft permits issued through public auction, the fee shall be the amount bid at public auction for the permit, a yearly fee of \$8,400 payable in twelve monthly installments or one per cent of the annual gross receipts, whichever is greater, as defined in section 13-231-56;
or
 - (B) For thrill craft permits not issued through public auction, the fee shall be a yearly fee of \$8,400 payable in twelve monthly installments or one per cent of the annual gross receipts, whichever is greater, as defined in section 13-231-56.
 - (C) For parasailing permits issued through public auction, the fee shall be the amount bid at public auction for the permit, or a minimum yearly fee of \$8400, payable in twelve monthly installments or one per cent of the annual gross receipts, whichever is greater, as defined in section 13-231-56, or;
 - (D) For parasailing permits not issued through public auction, the fee shall be a yearly fee of \$8400, payable in twelve month installments or one per cent of the annual gross receipts, whichever is greater, as defined in section 13-231-56.
 - (E) For water sledding and commercial high speed boating, the greater of an annual fee of \$300 per passenger seat, payable in twelve monthly installments, or one per cent of the annual gross receipts, as defined in section 13-231-56.

(b) Delinquency in the payment of any fees owed to the department in excess of sixty days after it becomes delinquent, [will] shall result in automatic revocation of the commercial operating area [use] permit, unless the deficiency is corrected within thirty days from the date of revocation.” [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)(Imp: HRS §§200-2, 200-3, 200-4, 200-22,

200-24)

107. Section 13-256-12, Hawaii Administrative Rules, is amended to read as follows:

“§13-256-12 Gross receipts. (a) Gross receipts as used in this chapter [means all moneys paid or payable to the account of the commercial permittee, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, and sales have a direct relationship to the vessel] shall be as described in section 13-231-56.

[(b) Each commercial use permittee shall be responsible for submitting to the department a monthly statement of its gross receipts.]” [Eff 2/24/94
am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

108. Section 13-256-15, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-15 Commercial vessel shoreline access. (a) No commercial vessel shall land, embark or discharge passengers at any state facility or county facility, or at other public beaches except for locations at which the permittee has been issued an appropriate permit by the department or a lease or permit by the board of land and natural resources or a county, or within designated ingress/egress zones.

(b) Notwithstanding subsection (a), unless otherwise prohibited by city and county, federal or state rule, ordinance or law, access to and from the shoreline shall be presumed to be allowed by commercial permittees who have been issued a commercial activity permit in accordance with section 13-231-71." [Eff 2/24/94
am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

109. Section 13-256-32, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-32 Commercial [Operator Licensee] operator experience requirements.
(a) No commercial vessel operator shall be issued a commercial [operator] activity permit to operate or navigate within [the] Na Pali Coast ocean waters unless the applicant has a minimum of ninety days experience operating within [the] Na Pali Coast ocean waters attested to by two persons each of whom holds a valid commercial [operator] activity permit issued by the department for these waters.

(b) No commercial kayak tour guide [license] shall be issued a commercial [operator licensee] activity permit unless the operator meets the following conditions:

- (1) Possesses a current Red Cross Advanced Life Saving Certificate,
- (2) Has knowledge of elementary first aid;

- (3) Is physically qualified to perform as a kayak tour guide as evidenced by a written report of a physical examination made no earlier than thirty days prior to the application for the license; and
 - (4) Demonstrates a satisfactory knowledge of the waters through presentation of a log of ocean kayak trips performed in [the] Na Pali Coast restricted area during the preceding six-month period.
- (c) The department shall establish an advisory committee of not less than three commercial [operator licensees] activity permittees who have been issued a commercial activity permit for these waters, to review applications and make recommendations for commercial [operator licenses] activity permit required by this section. The department may seek recommendations for membership on the advisory committee from the North Shore Charter Boat Association. Members of the advisory committee shall have not less than three years experience in their area of specialty operating in the North Shore Kauai Ocean Recreation Management Area." [Eff 2/24/94
am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

110. Section 13-256-33, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-33 Priority and procedures in the issuance of commercial [vessel] activity permits. [(a) Notwithstanding the commercial use permit limitations in section 13-256-36 of fifteen commercial use permits at Hanalei River mouth and two commercial use permits for Anini Beach launching ramp, all commercial vessels operating with valid commercial use permits issued by the department on September 30, 1988, and who have complied with all the rules of the department and all other federal, state or county requirements may be issued a new commercial use permit for Hanalei or Anini Beach restricted Area.]

[(b)] (a) All commercial [use] activity permits issued for Hanalei River, Hanalei Bay ocean waters, and Anini Beach launching ramp shall be valid for not more than one year. These permits shall [automatically terminate on the expiration date and there shall be no presumption or implication of a right to renew.] be renewed in accordance with section 13-13-231-61.

[(c)] (b) An application for a commercial [use] activity permit shall be made in writing to the department on the form provided by the department. The applicant shall indicate in the application the type and characteristics of the vessel, including but not limited to the vessel's overall length, draft, beam, principal source of propulsion, and any secondary or auxiliary source of propulsion, the passenger carrying capacity, and any other pertinent information. No application shall be complete until the applicant pays the application fee prescribed in these rules. The department shall accept the completed application form for consideration by endorsing it and entering the time and date on the application form submitted. The time and date the application is endorsed by the department shall be the effective filing date and shall establish the applicant's priority date. An applicant must file a new application form each year

but the effective filing date shall remain the same.

(d) Only when the number of commercial [use] activity permits issued under subsection (a) falls below the number authorized in section 13-256-36, will the department offer a permit to the applicant with the earliest priority date; provided that in no event shall the limit set in section 13-256-36 be exceeded thereby." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

111. Section 13-256-36, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-36 Use of commercial vessels at the Hanalei River, Hanalei Bay ocean waters, and Anini Beach launching ramp. In addition to any federal, state or county law, rule, or ordinance, the following restrictions shall apply at the Hanalei River, Hanalei Bay ocean waters, and Anini Beach launching ramp.

- (1) No commercial vessel shall operate at or use the Hanalei River, Hanalei Bay ocean waters, or Anini Beach launching ramp for any commercial purposes without a commercial [use] activity permit.
- (2) No commercial [use] activity permits shall be issued for commercial vessels to operate at or on the Hanalei River or Hanalei Bay ocean waters, except that up to two commercial use permits may be issued for kayaks to operate on the Hanalei River or Hanalei Bay ocean waters. No more than twenty-four passengers shall be allowed per day under each permit. A kayak tour group shall not exceed six vessels for passengers, and shall additionally include at least one guide vessel per six passengers.
- (3) No more than two commercial [use] activity permits shall be issued for the Anini Beach launching ramp.
- (4) No more than three commercial kayak tour operators shall be registered and permitted to operate in the Na Pali Coast restricted area. No trip scheduled by a commercial kayak tour operator may include more than four kayaks for customers and two kayaks for guides. No commercial kayak tour operation shall conduct more than two trips per day.
- (5) Commercial vessels shall land at times designated by the department.
- (6) No commercial vessel shall carry more than thirty paying or non-paying passengers per day.
- (7) No commercial vessel shall be issued a commercial [use] activity permit to operate within the North Shore Kauai Ocean Recreation Management Area if its passenger carrying capacity exceeds twenty-five individuals.
- (8) The department may authorize a holder of an existing commercial [use] activity permit to substitute a larger vessel for a smaller vessel so long as the new vessel does not exceed the twenty-five person carrying capacity limit, nor the thirty passengers per day limitation." [Eff 2/24/94 am 11/30/00 am]

(Auth: HRS §§200-2, 200-3,
200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22,
200-24)

112. Section 13-256-37, Hawaii Administrative Rules, is repealed:

[“§13-256-37 Fees. (a) Fees required to be paid to the department are described in Chapter 13-234 and more specifically as follows:

- (1) Registration fee. A registration fee payable at the time of issuance shall be prescribed in section 13-253-1.
- (2) Operator license fee. A commercial operator license fee payable at time of issuance of the license shall be \$2.00.
- (3) Commercial vessel permit fee. A monthly commercial vessel permit fee shall be the greater of \$75.00 or two per cent of the monthly gross receipts.
- (b) Delinquency of any fees owed to the department will result in automatic revocation of the commercial vessel permit.”] [Eff 2/24/94 R] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

113. Section 13-256-39, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-39 Hanalei Bay ocean waters, general restrictions. ***

(e) The designated mooring area for the mooring or anchoring of transient and locally based vessels, is the area encompassed by the boundaries shown on Exhibit "C" dated September 19, 1988, located at the end of this subchapter, and which are described as follows:

Beginning at a point on the northwest corner of Hanalei Pier by azimuths clockwise from True South, 123 degrees for a distance of six hundred seventy-five feet; 346 degrees for a distance of one thousand two hundred seventy-seven feet; 022 degrees for a distance of seven hundred fifty-six feet; 127 degrees for a distance of three thousand two hundred twenty-five feet; then on a straight line to the point of beginning.

- (2) All vessels within Hanalei Bay ocean waters shall be moored or anchored within the designated mooring area.
- (3) No person shall navigate, moor, or anchor a commercial vessel, providing services on a fee basis, in a designated mooring area unless the vessel has been registered and the owner has a valid commercial [use] activity permit issued by the department.
- (4) No person shall anchor, moor or stay aboard a vessel except those equipped with an approved marine sanitation device (MSD) in good working condition, or those vessels exempt from MSD requirement in accordance with U.S.

Coast Guard regulations.

- (5) No permanent mooring shall be installed within the designated mooring area except by permit issued by the department."

[Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

114. Section 13-256-40, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-40 Haena ocean waters, general restrictions. (a) The Haena ocean waters are subject to the following restrictions. This section shall not apply in the event of an emergency, to law enforcement or to rescue craft, or to vessels participating under a valid ocean waters event permit issued by the department, Coast Guard or Hawaiian design outrigger canoes engaged in crew training.

- (1) No commercial motorized vessel shall land, or discharge or load passengers from shore within Haena ocean waters, unless the owner possesses a valid commercial [use] activity permit for the use of the beach for this purpose issued by the board of land and natural resources. The total number of vessels operating from this area shall not exceed ten passenger carrying vessels and one support craft.
 - (2) No person shall solicit business or offer goods or services for rent, sale or use within Haena ocean waters.
 - (3) Non-motorized commercial vessels may be permitted to land at the beach area fronting the western half of the county beach park.
 - (4) Vessels may be moored or anchored only during daylight hours.
 - (5) Motorized vessels shall not exceed a speed of "slow-no-wake" (five miles per hour) within Haena ocean waters.
- [(c)] (b) Recreational Zone A, Haena ocean waters.
- (1) Zone A means the area confined by the boundaries shown on Exhibit "D" dated June 30, 1988, located at the end of this subchapter, which boundaries are described as follows:

Beginning at the intersection of the edge of the inner reef and the mean low water mark on the south side of the boat channel, then clockwise along the outer edge of the inner reef to the intersection of the edge of the reef and a straight line drawn between a marker pole on the shoreline and the exposed rock on the southern tip of the outer reef, then along this line to the exposed rock, then along a line drawn at a ninety degree angle to the outer edge of the reef, then clockwise along the outer edge of the reef to the point where it becomes tangent to the Haena ocean waters boundary line, then clockwise along the boundary line to the mean low water mark to the point of beginning.
 - (2) Restrictions. Zone A is designated for recreational use. No commercial

- motorized vessel shall be permitted within Zone A, provided that customers patronizing commercial vessels anchored or moored within Zone C shall be allowed to enter Zone A for snorkeling or scuba diving activities.
- (3) Notwithstanding the provisions of subsection (b)(2), commercial vessels whose owners possess a valid [use] commercial activity permit issued by the department of land and natural resources shall be permitted direct access to the beach area specified in the permit for the purpose of passenger pick-up or discharge.
- [(d)] (c) Swimming and Snorkeling Zone B, Haena ocean waters.
- (1) Haena Zone B means the area confined by the boundaries shown on Exhibit "D" dated June 30, 1988 located at the end of this subchapter and described as follows:

Beginning at the intersection of the western boundary of Haena ocean waters and the mean low water mark, then along the western boundary of Haena ocean waters for a distance of two hundred feet, then clockwise along a line drawn parallel to the low water mark at a distance of two hundred feet to the outer edge of the inner reef, then along the outer edge of the inner reef to the mean low water mark, then along the mean low water mark to the point beginning.
 - (2) Restrictions. Haena Zone B is designated for swimming and snorkeling activities. No motorized vessel shall be permitted within Zone B.
- [(e)] (d) Snorkeling Zone C, Haena ocean waters.
- (1) Haena Zone C is as shown on Exhibit "D" dated June 30, 1988, located at the end of this subchapter. Haena Zone C includes those ocean water areas outside Zone A and Zone B.
 - (2) Restrictions. Haena Zone C is an area designated for the use of motorized vessels with passengers engaged in snorkeling and scuba diving activities, Haena ocean waters include those ocean areas outside Zone A and Zone B. No vessel shall moor within Zone C except at three mooring buoys approved for installation by the board of land and natural resources along the outer edge of the inner reef at the locations shown on Exhibit "D" dated June 30, 1988. No more than two vessels may be moored to each buoy at any one time, for a period not exceeding forty-five minutes per vessel.
 - (3) Anchoring during daylight hours may be permitted within Zone C except in areas containing coral growth." [Eff 2/24/94 am]
(Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

115. Section 13-256-73, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-73 Kaneohe Bay Waters.***

(b) Commercial ocean recreation activities shall be restricted within Kaneohe Bay waters as follows:

- (1) No commercial operator, holding a valid ocean recreational management area commercial [use] activity permit, shall operate a thrill craft, engage in water sledding or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding during weekends and state or federal holidays.
- (2) All commercial ocean recreation activities in Kaneohe Bay waters are prohibited on Sunday, effective January 1, 1991."

[Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

116. Section 13-256-89, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-89 Waialae-Kahala Restricted Areas.

(d) Waialae-Kahala Beach Boat Channel.

- (1) The Waialae-Kahala beach boat channel means the area confined by the boundaries shown on Exhibit "II", dated, August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark at the southern tip of the Waialae Nui Stream groin, then by azimuth measured clockwise from True South, 205 degrees for a distance five hundred fifty feet, coincident with Swimming Area A boundary; then in a straight line to the low water mark at the south eastern tip of the rocky peninsula; then along the low water mark of the rocky peninsula and shoreline to a point one hundred twenty-five feet east of the rocky peninsula; then 343 degrees in a straight line to intersect Swimming Area B boundary; then along Swimming Area B boundary to the northern tip of the islet; then 160 degrees for a distance of four hundred twenty-five feet; then 025 degrees for a distance of four hundred seventy-five feet; then in a northwesterly direction to the point of beginning.

- (2) Restrictions. The Waialae-Kahala beach boat channel is designated for use by commercial vessels, operating under contract with the Kahala Hilton Hotel and holding a valid commercial [use] activity permit from the department. The operation of any other vessel is prohibited within this area." [Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

117. Material, except source notes, to be repealed is bracketed. New material is underscored.

118. Additions to update source notes to reflect these amendments are not underscored.

119. These amendments to chapters 13-230, 13-321, 13-232, 13-233, 13-234, 13-241, 13-242, 13-244, 13-250, 13-252, 13-253, 13-256 Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

Gilbert S. Coloma-Agaran, Chairperson
Department of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General